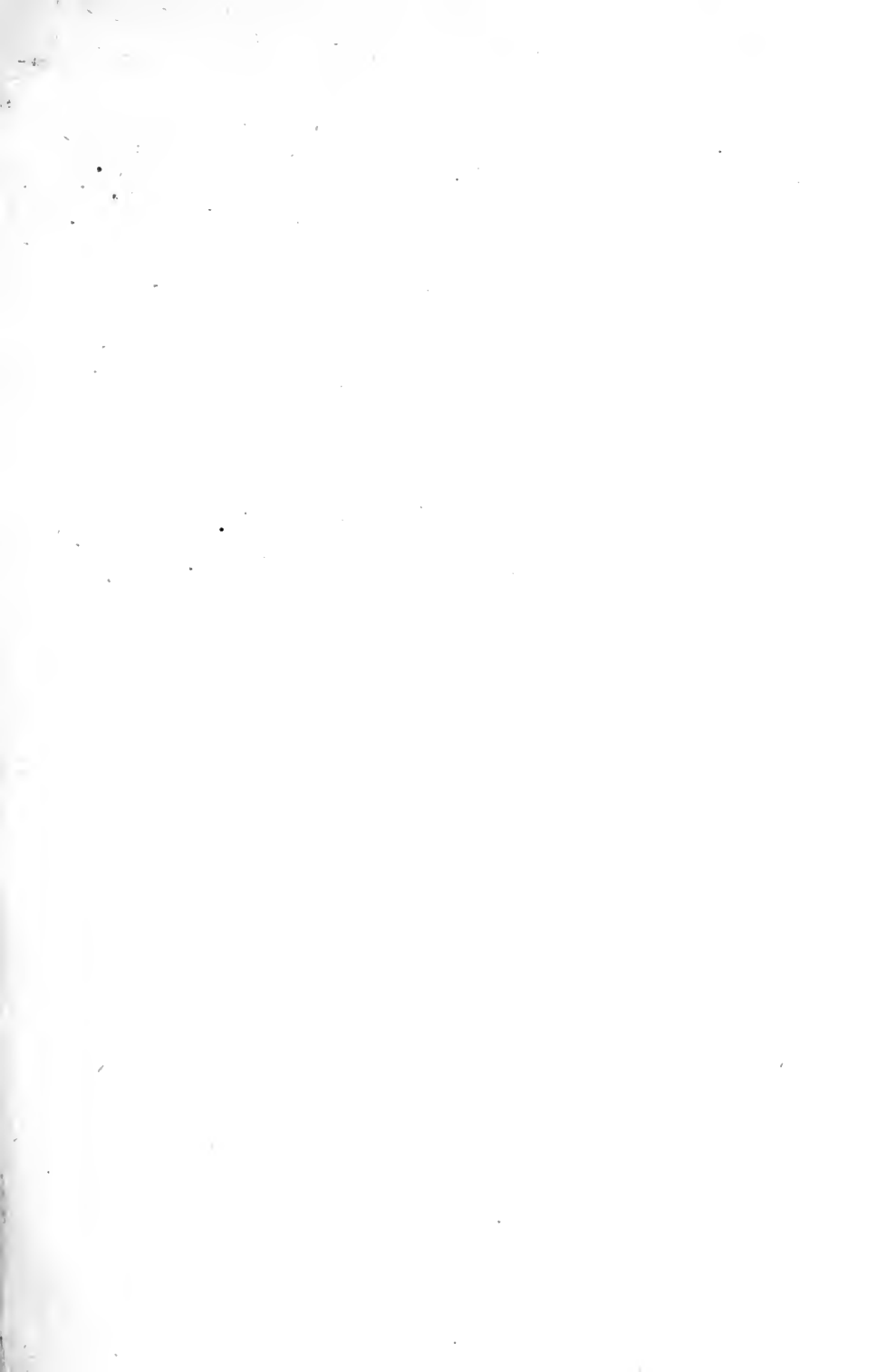






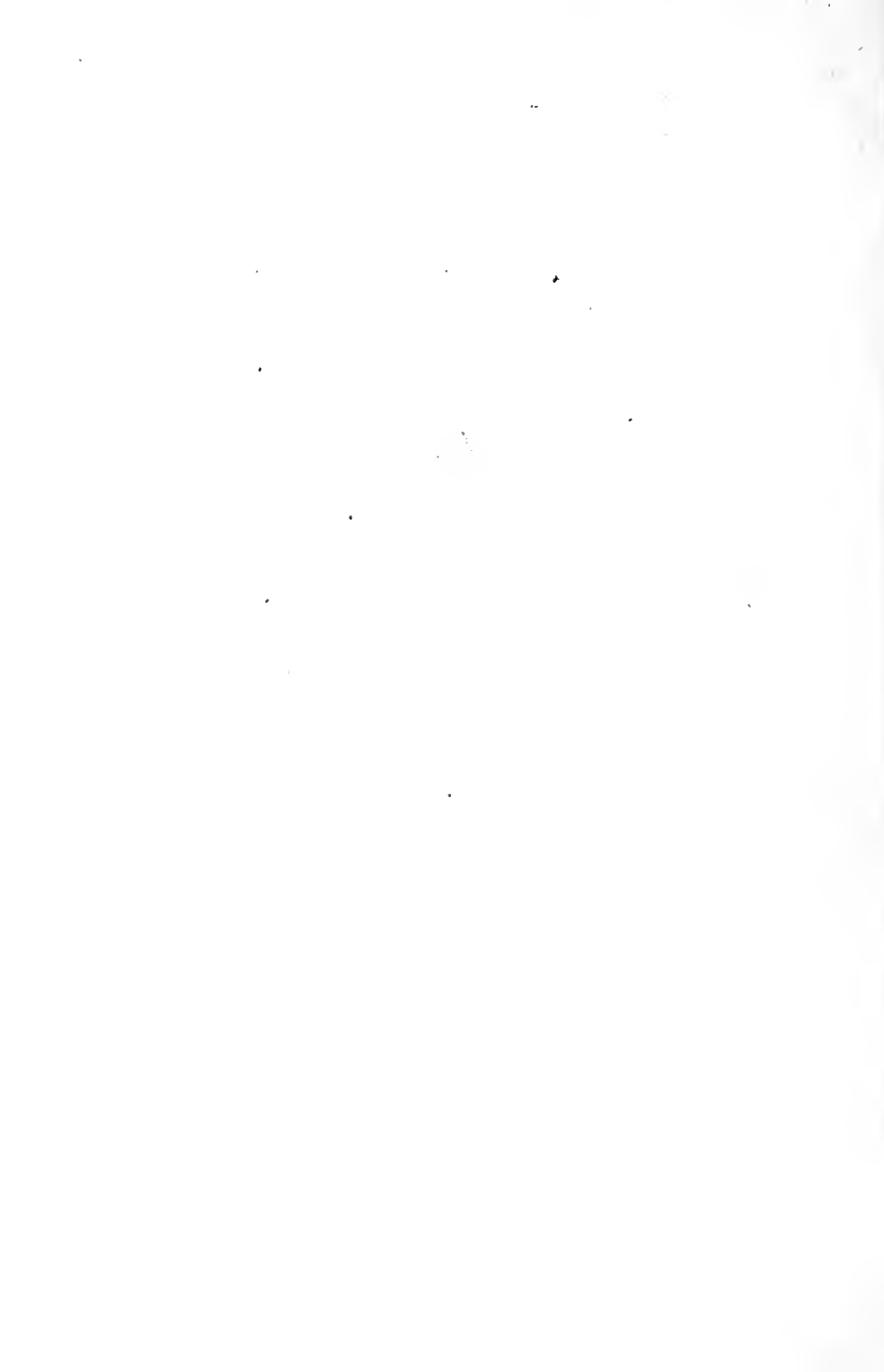
UNIVERSITY
OF CALIFORNIA
LOS ANGELES

SCHOOL OF LAW
LIBRARY





Digitized by the Internet Archive
in 2008 with funding from
Microsoft Corporation



BANKS AND BANKING

The Bank Act, Canada

WITH

NOTES, AUTHORITIES AND DECISIONS, AND THE
LAW RELATING TO CHEQUES, WAREHOUSE
RECEIPTS, BILLS OF LADING, ETC.

Also The Currency Act, The Dominion Notes Act, the Act Incorporating The Canadian Bankers' Association, and
the By-laws of the Association

FOURTH EDITION

BY

THE HONORABLE J. J. MACLAREN, D.C.L., LL.D.

*Justice of Appeal, Ontario; Author of "Bills, Notes
and Cheques," etc., etc.*

Toronto :

THE CARSWELL COMPANY, Limited,

1914

London :

SWEET & MAXWELL, Limited

First Edition, 1896.
Second Edition, 1901.
Third Edition, 1908.
Fourth Edition, 1914.

COPYRIGHT: CANADA, 1914, BY THE CARSWELL CO., LIMITED.

TORONTO
PRINTED BY THE CARSWELL CO. LIMITED
15 Duncan St., Toronto.

PREFACE TO THE FOURTH EDITION.

THE revision of the Bank Act at the last session of the Dominion Parliament would have called for a new edition of this work even if the third edition had not been out of print for nearly three years.

While the more important changes, such as those affecting the incorporation and organization of new banks, the Shareholders' Audit, the creation of Central Gold Reserves, the authorization of loans to farmers on their grain, and the more stringent provisions as to additional returns and publicity, and the creation of new offences and penalties are not numerous, yet more than one-half of the sections of the Act have been more or less changed in the revision.

This has necessitated the re-writing of a large portion of the notes upon the Act, and no less than one hundred and twenty-six pages have been added to this portion of the work. More than one hundred new cases are cited and referred to.

In the making up of the Index, list of cases, verification of references, etc., I have had the assistance of Kenneth B. Maclaren, B.A., student-at-law; the notes and comments upon the Act, and upon the cases and authorities, are my own.

J. J. M.

Toronto, January, 1914.

PREFACE TO THE FIRST EDITION.

OUR Canadian Statutes on general subjects are largely a reproduction of legislation previously enacted elsewhere, generally in Great Britain. The Bank Act is, however, an exception to this rule. Our financial conditions are very different from those of the mother country, and our whole banking policy has been widely divergent from that of the United States.

It is more than seventy years since charters were granted to banks in each of the old provinces that are now known as Ontario, Quebec, Nova Scotia and New Brunswick, and which comprised the whole Dominion as it was formed in 1867, and with a single exception these are all in successful operation to-day. The organization of other banks, and the periodical renewal of all bank charters, as well as the discussions incident to the frequent amendment and revision of our general banking laws, have in the course of time evolved a system that appears to be admirably adapted to the circumstances of a young and growing country like Canada.

On this account many of the rules and principles laid down in the general works on banking by writers in Great Britain and the United States are inapplicable here, and they are apt to prove misleading. The same is also true to a certain extent of the decisions of the Courts in these and other countries.

In the selection of cases as authorities and illustrations, the writer has sought to include all those in our Canadian reports which appear to embody or settle a principle, and which have not been overridden by subsequent legislation, or overruled by later decisions.

The leading cases in the higher Courts in England and in the United States, which seem to be in harmony with our law, have also been given. Of the cases cited three hundred and fifty are Canadian, and the references to Canadian Statutes number nearly three hundred.

CONTENTS.

	PAGE
CASES CITED	xiii
STATUTES CITED	xxix
ABBREVIATIONS	xxxii

THE BANK ACT.

SECTION.

1. Short Title—The Bank Act	1
History of Canadian legislation	1
2. Interpretation—Definitions	7
3. Application of the Act—Recent changes.....	16
4. Charters continued to 1923.....	20
5. Banks in course of Winding-up.....	21
6. Bank of British North America	22
7. Head office of Bank of B. N. A.	23

INCORPORATION AND ORGANIZATION OF BANKS.

8. Future Acts of Incorporation	23
9. Incorporation under Schedule B.....	23
10. Capital stock and shares	24
11. Provisional directors	24
12. Stock books and subscriptions	24
13. First meeting of subscribers	29
14. Bank commencing business	33
15. Certificate of Treasury Board.....	34
16. Certificate to issue within a year.....	35
17. Return of deposit	39

INTERNAL REGULATIONS.

18. Shareholders may make by-laws	40
Annual meeting—proxies	42
Existing by-laws continued	45
19. Board of directors	46
20. Qualification of directors	49
21. Election of directors	51
22. Who shall be directors	52
23. Provision in case of a tie	53
24. Election of president and vice-president	54

SECTION.	PAGE
25. Vacancies in the board	55
26. Vacancy in office of president	56
27. Failure to elect directors	56
28. Meetings of directors	57
29. General powers of directors	58
30. Directors may appoint officers	59
Officers must give bonds	66
31. Special meeting of shareholders	71
Removal of president, director, etc.	72
32. Votes of shareholders	73

CAPITAL STOCK.

33. Increase of capital stock.....	76
34. Allotment of stock	77
35. Reduction of capital	79
35A. Re-division of shares	82

SHARES AND CALLS.

36. Shares are personalty	84
Books of subscription—transfers	85
37. Notice of double liability	87
38. Calls—Intervals—Notice	87
39. Capital lost to be called for	90
40. Recovery of calls	91
41. Penalty and forfeiture of shares	92
42. Action to recover calls	95

TRANSFER AND TRANSMISSION OF SHARES.

43. Conditions for valid transfer.....	95
Provincial share registers	99
44. List of daily transfers	100
45. Requirements for valid transfer	105
46. Sale of shares under execution.....	106
47. Transmission of shares	107
48. Transmission by marriage.....	111
49. Authentication of declaration.....	112
50. Transmission by will or intestacy.....	113
51. Transmission by decease	114

SHARES SUBJECT TO TRUSTS.

52. Not bound to see to trusts	118
53. When shareholder not personally liable.....	122

ANNUAL AND SPECIAL STATEMENTS.

SECTION,	PAGE
54. Statement at annual meeting—Contents.....	124
55. Further statements if required.....	127
56. Shareholders' audit	130

DIVIDENDS.

57. Dividends quarterly or half-yearly.....	141
58. Not to impair capital	144
59. Dividend limited by rest	145

CASH RESERVES.

60. Part to be in Dominion notes.....	146
---------------------------------------	-----

ISSUE AND CIRCULATION OF NOTES.

61. Bank notes—amount limited.....	148
Central gold reserves	151
62. Issue of sterling notes	158
63. Pledge of notes prohibited	160
64. Bank circulation redemption fund.....	161
65. Notes of suspended banks.....	164
66. Payment of share of suspended bank.....	166
67. Refund of deposit on winding-up.....	167
68. Rules as to fund	167
69. Minister may enforce payments.....	168
70. Redemption of notes in Canada.....	168
71. Bank must take its own notes at par.....	169
72. Payment in Dominion notes if requested.....	170
73. Bills or notes not under seal.....	171
74. Signing notes by machinery	173
75. Counterfeit notes to be stamped.....	174

BUSINESS AND POWERS OF THE BANK.

76. Branches—Banking business	175
The bank as a dealer	178
Discounts	180
Collateral security	182
Negotiable instruments	185
A general banking business.....	197
Business prohibited to banks	204
Bankers' lien	210
Agents, trustees, etc.	214
Clearing house	218

SECTION.	PAGE
77. Bank's lien on debtor's stock	221
78. Sale of collateral securities.....	224
79. Acquisition of real estate	226
80. Mortgages as additional security.....	227
81. Purchase of realty by bank.....	235
82. Acquiring title to mortgaged property.....	237
83. Immovable property to be sold.....	238
84. Loans on standing timber	240
84A. Loans to receivers and liquidators.....	241
85. Advances for building ships.....	243
86. Warehouse receipts and bills of lading.....	244
87. Previous holder an agent	253
88. Loans to wholesale dealers, farmers and manufacturers.....	258
89. Goods manufactured from articles pledged.....	266
90. When bank may take security.....	273
Exchange of securities	279
91. Rate of interest or discount	280
92. Allowance of interest to depositors.....	282
93. Collection charges	283
94. Agency charges	284
95. Deposits and payments	284
Pass books—Deposit receipts	292
96. Payment of trust deposits	299
97. Death of depositor under \$500.....	303
98. Dominion government cheques—Payable at par.....	304

PURCHASE OF ASSETS OF A BANK.

99. A bank may sell its assets to another bank.....	305
100. Consideration for such sale	307
101. Submission to selling shareholders.....	308
102. Approval of agreement of sale.....	308
103. Approval by purchasing bank.....	309
104. Approval by Dominion Government	309
105. Sections 33 and 34 not to apply.....	310
106. Conditions of approval by Government.....	310
107. Further conditions of approval.....	311
108. Notes of selling bank assumed	313
109. Evidence of Government approval.....	314
110. Assets vest in purchasing bank.....	314
111. Selling bank to cease business.....	315

RETURNS BY THE BANK TO GOVERNMENT.

112. Monthly returns to the Minister.....	316
113. Special returns when required.....	318
114. Annual returns to the Minister.....	319

SECTION.

PAGE

PAYMENTS TO THE MINISTER ON WINDING-UP.

115. Unclaimed moneys to be paid to Minister.....	323
116. Moneys for outstanding notes.....	325

THE CURATOR.

117. Appointed by Bankers' Association.....	326
118. Manner of appointment	326
119. His powers and duties	327
120. Officers of bank to assist curator	328
121. Directors' acts subject to his approval.....	328
122. Curator to report to Minister	328
123. Remuneration of curator	328

BY-LAWS OF BANKERS' ASSOCIATION.

124. Subject to approval of Treasury Board.....	329
---	-----

INSOLVENCY.

125. Double liability of shareholders	330
126. What constitutes insolvency	332
127. Charter partially in force	335
128. Calls on winding-up	335
129. Liability of directors continues.....	338
130. Liability of ex-shareholders continues	338
131. Order of charges on assets.....	340

OFFENCES AND PENALTIES.

131A. Premature payment of expenses.....	342
131B. Giving or accepting gifts	344
132. Premature commencement of business.....	345
133. Improper selling of shares	345
134. Not holding enough Dominion notes	346
135. Excessive issue of notes	346
136. Issuing unauthorized notes for circulation.....	347
137. Defacement of notes	349
138. Issuing notes during suspension	350
139. Pledging notes	351
140. Issuing notes fraudulently	351
140A. Irregular issue of statement.....	352
141. Acquiring securities contrary to Act.....	353
142. Selling improperly under power of sale	354
143. Making false statement in security.....	355
144. Depriving bank of pledged goods.....	356
145. Improper sale of pledged shares.....	357

SECTION.	PAGE
146. Bank doing prohibited business.....	358
146A. Pledging notes for bank.....	359
146B. Paying bank debts during suspension.....	359
147. Not making monthly returns	359
147A. Not reporting excessive note issue.....	360
147B. Not making return of real estate.....	360
147C. Not making interest returns.....	361
148. Not making special returns	361
149. Not making return of unpaid drafts.....	362
150. Not sending list of shareholders.....	362
151. Not sending list of unpaid dividends.....	363
152. Date stamp on envelope as evidence.....	363
153. Making wilfully false statement.....	364
154. Directors not making calls	368
155. Undue preference to bank's creditors.....	369
156. Improperly issuing title "bank." etc.....	369
157. Committing an offence against the Act.....	371
158. Recovery of penalties	371
159. Repeal of R. S. O. c. 29 and c. 5, of 1912.....	372
160. Commencement of Act	372
SCHEDULE A.—List of banks.....	373
SCHEDULE B.—Form of Act of incorporation.....	374
SCHEDULE C.—Security under sec. 88.....	375
SCHEDULE D.—Form of monthly return to Minister.....	376
SCHEDULE E.—Form of return of circulation.....	380
SCHEDULE F.—Form of return of unpaid dividends.....	381

CHEQUES ON A BANK.

BILLS OF EXCHANGE ACT, PART III.....	382
165. Cheque defined	383
What provisions as to bills apply.....	387
Illustrations	393
166. Presentment for payment	401
167. Revocation by countermand or death	405

CROSSED CHEQUES.

168. General and special crossing.....	411
169. Crossing by drawer, etc.....	411
170. Crossing a material part of cheque.....	412
171. Crossed to more than one bank.....	413
172. Liability for improper payment.....	413
173. Protection for payment in good faith.....	414
174. Taking crossed cheque "not negotiable".....	416
175. Bank receiving payment in good faith.....	416

APPENDIX.

	PAGE
The Currency Act, 9-10 Edw. VII c. 14.....	420
The Dominion Notes Act, R. S. C. c. 27.....	431
Canadian Bankers' Association, Act of Incorporation.....	434
By-laws of the Association	440
Rules of Clearing Houses	449
Central Gold Reserves—Summary of Regulations.....	456
INDEX	457

CASES CITED.

- Acraman v. Morrice, 10.
 Adams. American Bank v. 70.
 Adamson's Case, 89.
 Agra & Masterman's Bank, *Re*, 202, 288.
 Agra & M. Bank, Jeffries v. 212.
 Agricultural S. & L. Association v. Federal Bank, 394.
 Akrokerri Mines v. Economic Bank, 419.
 Alberta Clothing Co., McCready v. 212.
 Albrecht, Duncuft v. 10.
 Alexander v. Automatic Tel. Co., 47.
 Alexander v. Burchfield, 403.
 Alexander, Wakefield v. 400.
 Allan v. Clarkson, 277.
 Allen v. Bank of N. B., 213.
 Allen v. Sharp, 179.
 Alma Spinning Co., *Re*, 56, 94.
 American Bank v. Adams, 70.
 Amy, Pendleton County v. 189.
 Anderson v. Thornton, 69.
 Anglin v. Kingston, 190.
 Ansell, Bank of Toronto v. 197.
 Anson v. Towgood, 142.
 Appleyard, Freeman v. 11.
 Arcand, Légaré v. 391, 404, 405.
 Armour v. Imperial Bank, 187.
 Armstrong v. Buchanan, 276.
 Armstrong, Hannan's Lake View v. 417.
 Armstrong v. McGibbon, 52.
 Armstrong v. Merchants M. Co., 89, 92.
 Arnold v. Caldwell, 398.
 Ashbury Ry. Co. v. Riche, 49.
 Asiatic Banking Corp., *Re*, 59, 202.
 Aspinwall, Board of Knox Co. v. 189.
 Aston, Sanderson v. 70.
 Athill v. Athill, 183.
 Atkinson v. Bell, 10.
 Attenborough, Clutton v. 400.
 Atty.-Gen. v. Atty.-Gen., 95.
 Atty.-Gen. v. Bouwens, 196.
 Atty.-Gen. v. Higgins, 102.
 Atty.-Gen. v. Montefiore, 85.
 Atty.-Gen. v. Newman, 104, 297.
 Atty.-Gen. v. N. Y. Breweries Co., 117.
 Atty.-Gen., Winans v. 104.
 Atty.-Gen., Woodruff v. 107.
 Austin, Barrick v. 65.
 Austin, Miller v. 188.
 Automatic Tel. Co., Alexander v. 47.
 Ayers v. South Australian Banking Co., 205, 235.
 Backhouse v. Charlton, 408.
 Bailey v. Jellett, 301, 408.
 Bailey, Morrison v. 385.
 Bain v. Torrance, 178, 304.
 Bainbridge v. Smith, 50.
 Baines' Case, 97, 339.
 Baird v. Bank of Washington, 48.
 Baker, Glyn v. 196.
 Bank of Australasia v. Breillat, 199.
 Bank of B. N. A., Benallack v. 191.
 Bank of B. N. A. v. Clarkson, 249, 275.
 Bank of B. N. A., Lee v. 187, 295.
 Bank of B. N. A., Richards v. 213.
 Bank of B. N. A., Thien v. 208, 230.
 Bank of B. N. A., Torrance v. 129.
 Bank of B. N. A. v. Warren, 289, 395, 404.
 Bank of B. N. A., Wisconsin Bank v. 201.
 Bank of Columbus, U. S. v. 65.
 Bank of Commerce v. Jenkins, 46, 61.
 Bank of England v. Cutler, 98.
 Bank of England, Hartga v. 120.
 Bank of England v. Moffat, 120.
 Bank of England v. Parsons, 120.
 Bank of England, Starkey v. 98.
 Bank of England, Vagliano v. 290, 294, 406.
 Bank of England, Whitaker v. 292, 405.
 Bank of England, Willis v. 177.
 Bank of Hamilton v. Donaldson, 235.
 Bank of Hamilton v. Halstead, 275.
 Bank of Hamilton, Henderson v. 292, 405.
 Bank of Hamilton v. Imperial Bank, 219.
 Bank of Hamilton, Imperial Bank v. 220, 386, 390, 395, 399.
 Bank of Hamilton v. Noye Mfg. Co., 14, 15, 250, 274.
 Bank of Hamilton v. Shepherd, 274.
 Bank Jacques Cartier, Donohue v. 116.
 Bank of Liverpool v. Bigelow, 56, 89, 98.
 Bank of London, Foster v. 129, 399.
 Bank of Montreal, Freeman v. 288.
 Bank of Montreal v. Geddes, 193.
 Bank of Montreal, Heneker v. 113.
 Bank of Montreal, Irwin v. 178, 304.
 Bank of Montreal, Jones v. 290, 406.
 Bank of Montreal v. The King, 293, 395, 418.

- Bank of Montreal v. Little, 187, 295.
 Bank of Montreal, McFarland v. 307.
 Bank of Montreal v. McWhirter, 232.
 Bank of Montreal, The Queen v. 177, 394.
 Bank of Montreal v. Rankin, 55, 396.
 Bank of Montreal, Rose-Belford Co. v. 394.
 Bank of Montreal, Ryan v. 129, 192.
 Bank of Montreal v. Simpson, 85.
 Bank of Montreal v. Sweeny, 215, 223.
 Bank of Montreal v. Thomas, 200.
 Bank of Montreal v. Tudhope, 266.
 Bank of New Brunswick, Allen v. 213.
 Bank of New Brunswick, Boyd v. 114, 120.
 Bank of New Brunswick, Scott v. 297.
 Bank of New South Wales v. Campbell, 238.
 Bank of N. S. W. v. Goulbourn, 303.
 Bank of N. S. W. v. Milvain, 292, 405.
 Bank of N. S. W., Owston v. 64.
 Bank of N. Z., Fleming v. 292, 405, 406.
 Bank of Nova Scotia, Barss v. 99.
 Bank of Nova Scotia, Landry v. 181.
 Bank of Nova Scotia, Reg. v. 341.
 Bank of Nova Scotia, Richards v. 64.
 Bank of Nova Scotia, Smith v. 98, 99.
 Bank of Nova Scotia, Thompson v. 64.
 Bank of Ottawa, Barry v. 263.
 Bank of Ontario, *In re*, 107.
 Bank of Passamaquoddy, Wild v. 65.
 Bank of St. Hyacinthe, Sarazin v. 21, 209.
 Bank of Scotland v. Dominion Bank, 198.
 Bank of Syria, *In re*, 48, 55.
 Bank of Toronto v. Ansell, 197.
 Bank of Toronto v. Cobourg P. & M. Ry. Co., 194.
 Bank of Toronto & Dickinson, 300.
 Bank of Toronto, Drake v. 372.
 Bank of Toronto v. European Assurance Society, 68.
 Bank of Toronto v. Lambe, 7.
 Bank of Toronto v. Perkins, 208, 229, 234.
 Bank of Toronto v. St. Lawrence Fire Ins. Co., 173, 296.
 Bank of Toronto v. Wilmot, 67.
 Bank of Upper Canada v. Bradshaw, 62.
 Bank of U. C., Commercial Bank v. 228, 232.
 Bank of U. C. v. Covert, 67.
 Bank of U. C. v. Killaly, 232.
 Bank of U. C., Lyman v. 232.
 Bank of U. C., McDonnell v. 232.
 Bank of U. C. v. Scott, 238.
 Bank of U. C. v. Widmer, 46.
 Bank of U. S., Fleckner v. 181.
 Bank of Van Diemen's Land v. Bank of Victoria, 198.
 Bank of Victoria, Bank of Van Diemen's Land v. 198.
 Bank of Washington, Baird v. 48.
 Bank of Washington, Barrington v. 70.
 Banque d'Hochelaga's Case, 398.
 Banque d'Hochelaga, Gratton v. 216.
 Banque d'Hochelaga, Robertson v. 92, 94.
 Banque Jacques Cartier v. C. & D. Savings Bank, 62.
 Banque Jacques Cartier v. Corporation of Limoilou, 391, 405.
 Banque Jacques Cartier, Donohue v. 116.
 Banque Nationale v. City Bank, 62, 390, 396.
 Banque Nationale, Grant v. 233, 241.
 Banque Nationale v. Lesperance, 68.
 Banque Nationale v. Merchants' Bank, 218.
 Banque Nationale v. Royer, 14, 253.
 Banque du Peuple, Exchange Bank v. 390, 396.
 Banque du Peuple, Hudon v. 107.
 Banque du Peuple, McCaffrey v. 234.
 Banque du Peuple v. Pacaud, 185.
 Banque Provinciale v. Charbonneau, 61.
 Banque de St. Hyacinthe v. Guilbault, 398.
 Banque Ville Marie, Wilson v. 396.
 Barber, Knight v. 11, 85.
 Barber, Latham v. 10.
 Barber v. Mackrell, 279.
 Barclay, Lewes Sanitary Co. v. 292.
 Barclay, Sheffield Corp. v. 98.
 Baril v. Tetrault, 396.
 Baring, Venables v. 196.
 Barkwell's Claim, 188.
 BARNED'S BANKING CO., *Re*, 191.
 Barnett, Brandao v. 210.
 Barrick v. Austin, 65.
 Barrington v. Bank of Washington, 70.
 Barrow, City Bank v. 257.
 Barrow's Case, 89.
 Barrow-in-Furness Co., *Re*, 89.
 Barry v. Bank of Ottawa, 258, 263.
 Barss v. Bank of Nova Scotia, 99.
 Bartlett, Gompertz v. 179.
 Barton, Gibson v. 251.
 Barwick's Case, 331.
 Barwick v. Eng. J. S. Bank, 49.
 Bates, Carstairs v. 181.
 Bathgate v. Merchants' Bank, 234.

- Bavins v. London and South Western Bank, 384, 417.
 Bayley, Clode v. 177.
 Bayley v. Manchester Ry. Co., 64.
 Beak v. Beak, 399, 409.
 Beard, Keene v. 389.
 Beatty, N. W. Transportation Co. v. 75.
 Beauchemin, Larocque v. 88.
 Beaudoin, Thibaudeau v. 207.
 Beaudry, Molsons Bank v. 261.
 Bechuanaland Exploration Co. v. London Trading Bank, 194.
 Belilios, Hardoon v. 123.
 Bell, Atkinson v. 10.
 Bell, Bowlby v. 10.
 Bell v. Carey, 290, 406.
 Bell, Thompson v. 64.
 Bell, Weir v. 49.
 Bellamy v. Marjoribanks, 409.
 Benas, Ogden v. 415.
 Bennett v. London and County Bank, 417.
 Bennett, Robson v. 389.
 Bentham Mills Co., *In re*, 109, 222.
 Bentinck v. London J. S. Bank, 186.
 Bergeron, Quebec Bank v. 184.
 Bernard, Cogs v. 248.
 Bessette v. Brien, 96.
 Bevan v. National Bank, 419.
 Bigelow, Bank of Liverpool v. 56, 89, 98.
 Bignold, *Ex parte*, 385.
 Birkbeck Loan Co. v. Johnston, 119.
 Birkbeck Loan Co., McKain v. 98.
 Bissell v. Fox, 417.
 Black v. Homersham, 142.
 Black v. Ottoman Bank, 70.
 Blackburn v. Cunliffe, 294.
 Blackley v. McCabe, 202, 404, 407.
 Blackwood v. Reg., 104, 297.
 Blake v. Hamilton Bank, 407.
 Blake, Toronto Brewing Co. v. 53, 56.
 Blakely Ordnance Co., *Re*, 194.
 Bloomenthal v. Ford, 79, 94.
 Blow, Farmers Bank v. 90.
 Blumberg v. Life Int. Corp., 393.
 Board of Knox Co. v. Aspinwall, 189.
 Bobbett v. Pinkett, 410.
 Boddington v. Schlenker, 396, 409.
 Bonar v. Macdonald, 69.
 Booth v. Powers, 386.
 Boschoek Co. v. Fuke, 50, 71.
 Boston & N. S. Coal Co., O'Dell v. 47.
 Bottomley's Case, 56, 94.
 Boulanger, Dion v. 262.
 Boulton v. Gzowski, 340.
 Boulton v. Langmuir, 386.
 Bouwens, Atty.-Gen. v. 196.
 Bowen v. Newell, 385.
 Bower v. Foreign Gas Co., 181, 212.
 Bowes, Foster v. 274.
 Bowlby v. Bell, 10.
 Bowmanville Machine Co., Smart v. 89.
 Bowsher, Davis v. 213.
 Boyd v. Bank of New Brunswick, 114, 120.
 Boyd v. Nasmith, 202, 391, 404, 405.
 Bradford Banking Co. v. Briggs, 121, 222.
 Bradshaw, Bank of U. C. v. 62.
 Braintree, Carver v. 231.
 Brandao v. Barnett, 210.
 Brandon v. Scott, 301.
 Bread Supply Association, *Re*, 332.
 Breillat, Bank of Australasia v. 199.
 Brien, Bessette v. 96.
 Briggs, Bradford Banking Co. v. 121, 222.
 British Linen Co. v. Caledonian Ins. Co., 196.
 British Mutual B. Co. v. Charnwood Forest Ry. Co., 49.
 Brocklebank, New London Bank v. 223.
 Bromley v. Brunton, 399.
 Brooks, Firth v. 403.
 Brown, *Re*, 385.
 Brown, City Bank v. 68.
 Brown, Mathews v. 417.
 Brown v. National Bank, 384.
 Brown, Teale v. 178, 214.
 Brown, Traders Bank v. 249.
 Browne v. Commercial Bank, 183.
 Brownrigg, Navulshaw v. 256.
 Bruce, Napier v. 69.
 Brunelle v. Ostiguy, 391, 405.
 Brunton, Bromley v. 399.
 Brush v. Molson's Bank, 183.
 Buchanan, Armstrong v. 276.
 Buckingham v. London and Midland Bank, 202, 406.
 Bucks & Oxon Bank, Coleman v. 302.
 Bunny, Shaw v. 236.
 Buntin, Reg. v. 369.
 Burchfield, Alexander v. 403.
 Burdick, Sewell v. 9.
 Burkinshaw v. Nicolls, 79, 89.
 Burland v. Earle, 75, 141.
 Bush v. Fry, 257.
 Cady, Colonial Bank v. 192.
 Caisse d'Economie, Petry v. 215.
 Caisse d'Economie, Rolland v. 209.
 Calderwood's Case, 28.
 Caldwell, Arnold v. 398.
 Caldwell v. National Bank, 66.
 Caledonian Ins. Co., British Linen Co. v. 196.
 Cameron v. Kerr, 232.
 Campbell, Bank of N. S. Wales v. 238.
 Campbell v. Maund, 74.
 Campbell v. Riendeau, 404.

- Canada Permanent L. & S. Co.,
Hughes v. 392.
- Canada Shipping Co.'s Case, 277.
- Canadian Bank of Commerce v. Mc-
Donald, 230, 234.
- Canadian Bank of Commerce, Norton
v. 201.
- Canadian Bank of Commerce v. Ste-
venson, 256.
- Canadian Bank of Commerce v. Wil-
son, 275.
- Canadian Bank of Commerce v. Wood-
ward, 185.
- Capeyron, Chasteauneuf v. 109.
- Capital & Co.'s Bank v. Gordon, 384,
400, 418.
- Carey, Bell v. 290, 407.
- Carlton v. Ireland, 410.
- Carpenter v. Street, 385.
- Carr v. Carr, 290.
- Carruthers, Royal Can. Bank v. 250.
- Carscaden, Molson's Bank v. 200.
- Carstairs v. Bates, 181.
- Carter, Holmes v. 123, 215.
- Carter, Muir v. 123, 215.
- Carver v. Braintree, 231.
- Cawley Co., *Re*, 89.
- Central Bank, *Re*, 295.
- Central Bank, *Re*, and Hogg, 28.
- Central Bank, *Re*, Baines' Case, 97.
- Central Bank, *Re*, Henderson's Case,
339.
- Central Bank, *Re*, Home Savings and
L. Co.'s Case, 97, 123, 193, 332.
- Central Bank, *Re*, Morton and Block's
Claims, 187.
- Central Bank, *Re*, Canada Shipping
Co.'s Case, 277.
- Central Bank, *Re*, Well's Case, 334.
- Central Bank, *Re*, Henderson's Case,
205, 339.
- Central Bank v. Garland, 184.
- Central Bank, Schroeder v. 400.
- Central Ont. Ry., Toronto General
Trusts v. 226.
- Chambers v. Smith, 90.
- Champion v. Gordon, 385.
- Chandler, Ross v. 303, 418.
- Chaplin, Johansen v. 201.
- Chaplin, Ontario Bank v. 334.
- Charbonneau, Banque Provinciale v. 61.
- Charitable Corp. v. Sutton, 47.
- Charnwood Forest Ry. Co., Brit.
Mutual B. Co. v. 49.
- Charlton, Backhouse v. 408.
- Chasteauneuf v. Capeyron, 109.
- Chatham Banner Co., *Re*, 129, 292.
- Chatterton v. London & County Bank,
291.
- Cheesman, Clement v. 399, 409.
- Chemical Nat. Bank, Critten v. 294.
- Cherry, National Bank v. 208, 235.
- Chew v. Traders Bank, 200.
- Chickering, Dedham Bank v. 60.
- Chinic, *Re*, 98.
- Chinic & Union Bank, 223.
- Christin, Compagnie de Navigation v.
89.
- Chunder Sein v. Ryan, 256.
- Citizens Ins. Co. v. G. T. Ry. Co., 68.
- Citizens Ins. Co., Wilson v. 252.
- City Bank, Banque Nationale v. 62,
390, 396.
- City Bank v. Barrow, 257.
- City Bank v. Brown, 68.
- City Bank, Goodenough v. 201.
- City & County Bank, Stone v. 205.
- City & District Savings Bank v.
Jacques Cartier Bank, 62.
- City & District Savings Bank, Ex-
change Bank v. 62, 193, 211, 212,
331.
- Clare's Claim, 260.
- Clark, *Re*, 103.
- Clark, France v. 192.
- Clarke v. Hart, 92.
- Clarke v. London & County Banking
Co., 417.
- Clarkson, Allan v. 277.
- Clarkson, Bank B. N. A. v. 249, 275.
- Clarkson v. Sterling, 277.
- Clayton's Case, 289.
- Clement v. Cheesman, 399, 409.
- Clench v. Consolidated Bank, 302.
- Clode v. Bayley, 177.
- Clutton v. Attenborough, 400.
- Clydesdale Bank, Kirkwood v. 407.
- Clydesdale Bank, McLean v. 407.
- Coates' Case, 89.
- Cobourg, Crawford v. 190.
- Cobourg P. & M. Ry. Co., Bank of
Toronto v. 194.
- Cockburn v. Sylvester, 251, 275.
- Code, Union Bank v. 89.
- Coffey v. Quebec Bank, 14, 250.
- Coggs v. Bernard, 248.
- Cohen v. Hale, 407.
- Cole v. North Western Bank, 257, 258.
- Cole, Young v. 189.
- Coleman, *Re*, 251.
- Coleman v. Bucks & Oxon Bank, 302.
- Collins v. Collins, 85.
- Colonial Bank v. Cady, 192.
- Colonial Bank v. Marshall, 387.
- Colonial Bank v. Whinney, 85.
- Colonial Bank v. Willan, 48.
- Colonial Bank, Williams v. 97.
- Colville v. Flanagan, 409.
- Commercial Bank, *Re*, 188, 386, 390,
398.

- Commercial Bank v. Bank of U. C., 228, 232.
 Commercial Bank, Browne v. 183.
 Commercial Bank v. Fleming, 398.
 Commercial Bank v. G. W. Ry. Co., 48.
 Commercial Bank, Gillies v. 235.
 Commercial Bank, Mackay v. 63.
 Commercial Bank v. Rhind, 294, 407.
 Commercial Bank, Windsor v. 147.
 Commercial National Bank v. Corcoran, 19, 251.
 Commissioners of Herne Bay, Webb v. 189, 194.
 Common v. Matthews, 29.
 Compagnie de Navigation v. Christin, 89.
 Compagnie Paquet v. Paquin, 393.
 Compagnie de Villas, Hughes v. 93.
 Comptoir National, Kleinwort v. 415.
 Compton, E. T. Bank v. 190.
 Confederation Life v. Howard, 189.
 Confederation Life v. Labatt, 272.
 Conflans Stone Q. Co. v. Parker, 197.
 Conn v. Merchants Bank, 335.
 Conn v. Smith, 280.
 Consolidated Bank, Clench v. 302.
 Consolidated Bank, Prentice v. 185.
 Cook v. Royal Can. Bank, 99.
 Cooper v. Griffin, 50.
 Cooper v. Molsons Bank, 185.
 Cooper, Tassell v. 129.
 Copeland, McPherson v. 393.
 Corcoran, Nat. Bank Chicago v. 19, 251.
 Cordingly, Harris v. 291, 298.
 Cory, Dovey v. 145, 146, 367.
 Corney, Rothschild v. 404.
 Corry, Fielding v. 177.
 Cotté, The Queen v. 366.
 Counsell, Exchange Bank v. 334.
 County Life Assurance Co., *Re*, 47.
 County of Gloucester Bank v. Rudry Merthyr Co., 48.
 Couper's Trustees v. National Bank of Scotland, 407.
 Court v. Waddell, 331.
 Covert, Bank of U. C. v. 67.
 Cox, Seeley v. 64.
 Craig v. First Pres. Church, 32.
 Crawford v. Cobourg, 190.
 Crawford, Shaw v. 182.
 Crédit Foncier, Crouch v. 186, 194, 195.
 Crédit Lyonnais, Johnson v. 257.
 Crédit Lyonnais, Lacave v. 416, 417.
 Criddle, Prideaux v. 404.
 Critten v. Chemical Nat. Bank, 294.
 Cromwell v. Sac Co., 191.
 Crouch v. Crédit Foncier, 186, 194, 195.
 Crown Bank, Toronto C. & B. Co. v. 275.
 Crum, Oakbank Oil Co. v. 142.
 Cubley, Pigot v. 225, 271.
 Culverwell, Morley v. 181, 385.
 Cummer, Royal C. Bank v. 212, 232.
 Cummings v. Shand, 406.
 Cunliffe, Blackburn v. 294.
 Currie, Misa v. 198, 214, 288.
 Curtice v. London City Bank, 408.
 Cushing v. Dupuy, 6, 95, 118.
 Cuthbert v. Roberts, 214.
 Cutler, Bank of England v. 98.
 D'Arcy v. Tamar Ry. Co., 26, 47.
 Darveau, Merchants Bank v. 200.
 Da Silva v. Fuller, 385.
 Davidson, Dominion Bank v. 251.
 Davidson v. Grange, 53.
 Davies, Evans v. 85.
 Davis v. Bowsher, 213.
 Davis, Husband v. 301.
 Dawes, Sharp v. 33.
 Dawson, Pothonier v. 225.
 Day v. McLea, 393.
 Dedham Bank v. Chickering, 60.
 Deeley v. Lloyd's Bank, 289.
 De Gendre v. Kent, 143.
 Denham & Co., *Re*, 367.
 Derbyshire, *Re*, 290.
 Derbyshire Ry. Co., Serrell v. 404.
 De Serres v. Euard, 387, 402.
 Desrosiers v. Montreal P. & B. Ry. Co., 194.
 Detroit Savings Bank v. Ziegler, 70.
 Deverges v. Sandeman, 225, 271.
 Dickinson and Bank of Toronto, 300.
 Dickinson v. McMurray, 74.
 Dillon, *In re*, 188, 296.
 Dion v. Boulanger, 397.
 Dion v. Lachance, 397.
 Dobell v. Ontario Bank, 61.
 Dolan, Simpson v. 199.
 Dominion Bank v. Bank of Scotland, 198.
 Dominion Bank v. Davidson, 251.
 Dominion Bank v. Knowlton, 60.
 Dominion Bank v. Oliver, 332, 275.
 Dominion Bank, Toronto Club v. 303.
 Dominion Bank v. Union Bank, 395.
 Donald v. Suckling, 225.
 Donaldson, Bank of Hamilton v. 235.
 Donogh v. Gillespie, 200.
 Donohue v. Banque Jacques Cartier, 116.
 Dorion v. Dorion, 396.
 Dorrien, Lucas v. 213.
 Douglas, Nickle v. 102.
 Dovey v. Cory, 145, 146, 367.
 Drake v. Bank of Toronto, 372.
 Duffin v. Duffin, 296.
 Dufresne v. St. Louis, 393.
 Duggan, London & Can. L. & A. Co. v. 216.

- Duncan & Co. *In re*, 282, 287.
 Duncuft v. Albrecht, 10.
 Dunn v. Whalen, 401.
 Dunspaugh v. Molsons Bank, 199.
 Dupuy, Cushing v. 6, 95, 118.
 Earle, Burland v. 75, 141.
 East of England Banking Co., *Re*, 287.
 East Holyford Mining Co., Mahoney v. 48.
 Eastern Townships Bank v. Compton, 196.
 Eastern Townships Bank, Roxton v. 190.
 Economic Bank. Akrokerri Mines v. 419.
 Edelstein v. Schuler, 195.
 Edwards, Hitchcock v. 385.
 Edwards v. Vere, 287.
 Elliott, Hately v. 395.
 Elliott, Union Bank v. 183.
 Elwood, Rochester City Bank v. 70.
 Embury v. West, 277.
 Eng. & C. P. Co., Sutton v. 50.
 English & Irish Rolling S. Co., *Re*, 44.
 Eng. J. S. Bank, Barwick v. 49.
 Ernest v. Loma Mines, 44.
 Essex Land Co., *Re*, 233.
 Euard, De Serres v. 387, 402.
 European Bank. *In re*, 195.
 European & N. A. Ry. Co. v. McLeod, 29.
 European Assurance Society, Bank of Toronto v. 68.
 Evans v. Davies, 85.
 Ewer, Lockwood v. 225, 271.
 Exchange Bank v. Banque du Peuple, 390, 396.
 Exchange Bank v. C. & D. Savings Bank, 62, 193, 211, 212, 331.
 Exchange Bank v. Counsell, 334.
 Exchange Bank v. Fletcher, 63, 206.
 Exchange Bank v. Gault, 69.
 Exchange Bank v. Hall, 334.
 Exchange Bank v. Montreal Coffee House, 334.
 Exchange Bank v. Nowell, 183.
 Exchange Bank v. People's Bank, 63.
 Exchange Bank v. Quebec Bank, 397.
 Exchange Bank v. The Queen, 312.
 Exchange Bank, Senecal v. 331.
 Exchange Bank, Springer v. 68.
 Exchange Bank v. Stinson, 334.
 Eyre, *Ex parte*, 211.
 Farmers Bank v. Blow, 90.
 Fear, Woodland v. 177, 181, 406.
 Fearson, Nichols v. 179.
 Federal Bank, Agricultural S. & L. Association v. 391.
 Fielding v. Corry, 177.
 Fine Art Society v. Union Bank, 197.
 First Nat. Bank v. Leach, 391, 405.
 First Pres. Church, Craig v. 32.
 Firth v. Brooks, 403.
 Fisher v. Roberts, 416.
 Flanagan, Colville v. 409.
 Fleckner v. Bank of U. S., 181.
 Fleming v. Bank of N. Z., 292, 405, 406.
 Fleming, Commercial Bank v. 398.
 Fletcher, Exchange Bank v. 63, 206.
 Flewker, Heyman v. 257.
 Foley v. Hill, 288, 292, 405.
 Foreign Gas Co., Bowen v. 181, 212.
 Ford, Bloomenthal v. 79, 94.
 Forest of Dean Coal Co., *Re*, 47.
 Forster, Hopkinson v. 400.
 Forster, Mitchell v. 90.
 Forster v. Mackreth, 385, 399.
 Foster v. Bank of London, 129, 399.
 Foster v. Bowes, 274.
 Foster v. Fraser, 393.
 Fothergill's Case, 88.
 Fournier v. Union Bank, 396.
 Fourth Street Bank v. Yardley, 399.
 Fox, Bissell v. 417.
 Foxall, Phillips v. 70.
 Foxton v. Manchester & L. B. Co., 302.
 France v. Clark, 192.
 Franck, Hall v. 300.
 Fraser, Foster v. 393.
 Fraser v. Imperial Bank, 201.
 Freeman v. Appleyard, 11.
 Freeman v. Bank of Montreal, 288.
 Fry, Bush v. 257.
 Fry v. Quebec Harbor Comrs. 252.
 Fuke, Boschoek Co. v. 50, 71.
 Fuller, Da Silva v. 385.
 Fuller, Hall v. 399.
 Fulton Co., Marsh v. 189.
 Gaden v. Newfoundland Savings Bank, 203, 390, 400.
 Galloway's Case, 28.
 Garden Gully Co. v. McLister, 93.
 Garland, Central Bank v. 184.
 Garnett v. McKewan, 178, 406.
 Gaskell, Lee v. 10.
 Gault, Exchange Bank v. 69.
 Geddes, Bank of Montreal v. 193.
 Geddes, Montreal C. & D. Savings Bank v. 193.
 General Estates Co., *Re*, 194.
 General Exchange Bank v. Horner, 64.
 Gibb v. Poston, 53.
 Giblin v. McMullen, 203.
 Gibson v. Barton, 351.
 Gillespie, Donogh v. 200.
 Gillies v. Commercial Bank, 235.
 Gilmour v. Hall, 53.
 Glenwood Lumber Co. v. Phillips, 241.
 Glyn v. Baker, 196.
 Gomersall, *Re*, 181.

- Gompertz v. Bartlett, 179.
 Good & J. Y. Schantz Co., 99.
 Goodenough v. City Bank, 201.
 Goodfallow, *Re*, 267.
 Goodwin v. Robarts, 186, 194, 195.
 Gordon, Capital & Co.'s Bank v. 384, 400, 418.
 Gordon, Champion v. 385.
 Gordon, London City & M. Bank v. 384, 418.
 Gore Insurance Co., McBride v. 250.
 Gorgier v. Mieville, 196.
 Gosman, *In re*, 282.
 Goulbourn, Bank of N. S. Wales v. 303.
 Gouldsbury, Hudleston v. 85.
 Grand Trunk Ry. Co., Cit. Ins. Co. v. 68.
 Grand Trunk Ry. Co., Royal Can. Bank v. 9, 250.
 Grange, Davidson v. 53.
 Grant v. Banque Nationale, 233, 241.
 Grant, Household Fire Ins. Co. v. 28.
 Gratton v. Banque d'Hochelaga, 216.
 Graves v. Home Bank, 293.
 Gray v. Johnston, 301.
 Great Northern Works, *In re*, 27.
 Great Western Ry. Co., Commercial Bank v. 48.
 Great Western Ry. Co. v. London & C. Banking Co., 418.
 Great Western Ry. Co., Mason v. 15, 249, 267.
 Grenier, Prefontaine v. 146, 367.
 Greymouth Paint Co., Yuill v. 47.
 Grieve v. Molsons Bank, 61.
 Griffin, Cooper v. 50.
 Griffin, Lee v. 10.
 Groome, London & County Bank v. 404.
 Grote, Young v. 399.
 Guilbault, Banque de St. Hyacinthe v. 398.
 Gunn's Case, 28.
 Gunn, Pawle v. 11.
 Gurney v. Womersley, 179, 181.
 Gzowski, Boulton v. 340.
 Hale, Cohen v. 407.
 Hall, Exchange Bank v. 334.
 Hall v. Franck, 300.
 Hall v. Fuller, 399.
 Hall, Gilmour v. 53.
 Hallen v. Runden, 10.
 Hallett & Co., *Re*, 181.
 Hallmark's Case, 89.
 Halstead, Bank of Hamilton v. 275.
 Hamilton Bank, Blake v. 407.
 Hamilton v. Holmes, 29.
 Hamilton, Trust & Loan Co. v. 190.
 Hampson, Imperial Co. v. 72.
 Hampson, National Mercantile Co. v. 266.
 Hancock, Merchants Bank v. 251.
 Hannan's Lake View v. Armstrong, 417.
 Hannum v. McRae, 129.
 Harben v. Phillips, 31, 43.
 Hardoon v. Belilios, 123.
 Hardy v. Veasey, 129.
 Hare v. Henty, 404.
 Harris v. Cordingley, 291, 298.
 Harrison v. Nicollet Bank, 385.
 Harron v. Yernen, 236.
 Hart, Clarke v. 92.
 Hartga v. Bank of England, 120.
 Harvey, Larraway v. 397.
 Hately v. Elliott, 395.
 Hatfield v. Imperial Bank, 261, 263.
 Hatton, National Ins. Co. v. 89.
 Hayeratt Gold R. & M. Co., *Re*, 26.
 Hazelton, Reg. v. 386.
 Healey v. Home Bank, 226.
 Hebb's Case, 86.
 Heilbut v. Nevill, 300.
 Heilig, Molsons Bank v. 233.
 Henderson's Case, 205, 339.
 Henderson v. Bank of Hamilton, 292, 405.
 Heneker v. Bank of Montreal, 113.
 Henry v. Simard, 53.
 Henty, Hare v. 404.
 Heselstine v. Siggers, 10, 196.
 Hewitt v. Kaye, 188, 399, 408.
 Heyman v. Flewker, 257.
 Heywood v. Pickering, 202, 404.
 Higgins, Atty.-Gen. v. 102.
 Higgins, North Sydney Co. v. 89.
 Higgon, Young v. 90.
 Hill, Foley v. 288, 292, 405.
 Hill v. Smith, 290, 406.
 Hincks, Reg. v. 318, 366.
 Hirachand v. Temple, 393.
 Hirst, Wilson v. 289.
 Hitchcock v. Edwards, 385.
 Hochelaga Bank, Insky v. 213.
 Hochelaga Bank, London Guarantee Co. v. 69.
 Hodgkin, *Ex parte*, 277.
 Hoefler v. Irwin, 241.
 Hogg, Central Bank & 28.
 Holland v. Manchester Banking Co. 295.
 Holmes v. Carter, 123, 214.
 Holmes, Hamilton v. 29.
 Home Bank, Graves v. 293.
 Home Bank, Healey v. 226.
 Home Bank, Hubbert v. 290.
 Home Savings & Loan Co.'s Case, 97, 123, 193, 332.
 Homersham, Black v. 142.

- Hopkinson v. Forster, 400.
 Horbury Bridge, *Re*, 31.
 Hornblower, Randolph Bank v. 401.
 Hornbury v. McLaren, 408.
 Horner, General Exchange Bank v. 64.
 Horsey's Claim, 226.
 Household Fire Ins. Co. v. Grant, 28.
 Hovey, Mill Dam Foundry v. 231.
 Howard, Confederation Life v. 189.
 Howard v. Pat. Ivory Co., 47.
 Howard v. Sadler, 50.
 Howbeach Coal Co. v. Teague, 27, 44.
 Hubbard v. Home Bank, 290.
 Hudleston v. Gouldsbury, 85.
 Hudon v. Banque du Peuple, 107.
 Hughes v. Canadian Permanent L. & S. S., 392.
 Hughes v. Compagnie de Villas, 93.
 Hughes v. Rees, 102.
 Hughes, Vinden v. 395.
 Hull Glass Co., Smith v. 60.
 Hull, Imperial Bank v. 253.
 Humble v. Mitchell, 10, 84, 85.
 Humby's Case, 339.
 Hunter, Lord v. 396.
 Husband v. Davis, 301.
 Imperial Bank, Armour v. 187.
 Imperial Bank v. Bank of Hamilton, 220, 386, 390, 395, 399.
 Imperial Bank, Bank of Hamilton v. 220.
 Imperial Bank, Fraser v. 201.
 Imperial Bank, Hatfield v. 261, 263.
 Imperial Bank v. Hull, 253.
 Imperial Bank, Jones v. 179.
 Imperial Bank, Penchen v. 272.
 Imperial Bank, Rear v. 405.
 Imperial Co. v. Hampson, 72.
 Imperial Land Co., *Re*, 194.
 Imperial Paper Mills v. Quebec Bank, 261.
 Indian Zoedone Co., 43.
 Ingham, Simpson v. 178, 289.
 Inglis v. Robertson, 253.
 Innes v. Stephenson, 301.
 Insky v. Hochelaga Bank, 213.
 International Contract Co., *In re*, 106.
 Ireland, Carlon v. 410.
 Ireland v. North of Scotland Co., 406.
 Ireland, Ont. Marine Ins. Co. v. 89.
 Irvine v. Union Bank of Australia, 49, 71.
 Irwin v. Bank of Montreal, 178, 304.
 Irwin, Hoedler v. 211.
 Isle of Wight Ry. Co. v. Tahourdin, 73.
 Jackson, Rex v. 386.
 Jacques Cartier Bank, City & District Savings Bank v. 62.
 Jacques Cartier Bank v. The Queen, 197.
 Jeffery, Lewis v. 179.
 Jeffries v. Agra & M. Bank, 212.
 Jellett, Bailey v. 301, 408.
 Jenkins, Bank of Commerce v. 46, 61.
 Jewan v. Whitworth, 256.
 Johansen v. Chaplin, 201.
 Johnson v. Cr dit Lyonnais, 257.
 Johnson v. Lyttle's Iron Agency, 89, 92, 94.
 Johnson v. Roberts, 289.
 Johnston, Birkbeck Loan Co. v. 119.
 Johnston, Gray v. 301.
 Johnston, Mason v. 393.
 Jones v. Bank of Montreal, 290, 406.
 Jones v. Imperial Bank, 179.
 Jones v. Peppercorne, 213.
 Jones v. Ryde, 179.
 Jonmenjoy v. Watson, 183, 274.
 Kaye, Hewitt v. 188, 399, 408.
 Keane v. Roberts, 301.
 Keene v. Beard, 380.
 Kelk, London Financial Association v. 180.
 Kelsall, Wallace v. 300.
 Kemp v. Westbrook, 271.
 Kennedy, *Ex parte*, 27.
 Kennedy, Molsons Bank v. 199.
 Kenny v. Price, 397.
 Kent, De Gendre v. 143.
 Kepitigalla R. E. v. National Bank, 294.
 Kerr, Cameron v. 232.
 Kerr, Milloy v. 13.
 Killaly, Bank of U. C. v. 232.
 Kilsby v. Williams, 406.
 King, The Bank of Montreal v. 293, 395, 418.
 King, The v. Lovitt, 297, 367.
 King, The v. Richard, 386.
 King, The, The Royal Bank v. 298.
 Kingston, Anglin v. 190.
 Kingston, *Ex parte*, 302.
 Kirkwood v. Clydesdale Bank, 407.
 Kirkwood v. Thompson, 236.
 Klienwort v. Comptoir National, 415.
 Knight v. Barber, 11, 85.
 Knipe, Ogle v. 85.
 Knowlton, Dominion Bank v. 60.
 Kolfage, Redpath v. 202, 393, 404.
 Kyle, Semple v. 407.
 Kymer v. Laurie, 290, 406.
 Labatt, Confederation Life v. 272.
 Lacave v. Cr dit Lyonnais, 416, 417.
 Lachance, Dion v. 397.
 Ladbroke, Rogerson v. 408.
 Lafrance, Bank of B. N. A. v. 191.
 Lajoie, Robertson v. 256, 276.
 Lake Superior Nav. Co. v. Morrison, 29.
 Lambe, Bank of Toronto v. 7.

- Lambeth, Reg v. 74.
 Lanaud, Molsons Bank v. 13.
 Lancaster, *Ex parte*, 43.
 Landry v. Bank of N. S. 181.
 Lang v. Smyth, 196.
 Langmuir, Boulton v. 386.
 Lapierre v. Banque de St. Jean. 21.
 Larocque v. Beauchemin, 88.
 Larraway v. Harvey, 397.
 Latham v. Barber, 10.
 Laurie, Kymer v. 290, 406.
 Lawson v. McGeoch, 277, 278.
 Leach, First Nat. Bank v. 391, 405.
 Leather M. Bank v. Morgan, 294.
 Leduc v. Ward, 9.
 Lee v. Bank B. N. A., 186, 295.
 Lee v. Gaskell, 10.
 Lee v. Griffin, 10.
 Lee v. Sankey, 300.
 Lee, Stewart v. 409.
 Leeds Banking Co., *Re*, 28.
 Leese v. Martin, 211, 213.
 Légaré v. Arcand, 391, 404, 405.
 Leipschitz v. Montreal Street Ry. Co., 397.
 Lesperance, Banque Nationale v. 68.
 Leveaux, Smith v. 288.
 Levita's Case, 29.
 Lewes Sanitary Co. v. Barclay, 292.
 Lewis v. Jeffrey, 179.
 Lewis v. Madocks, 26, 43.
 Li Yan Sam, Russo-Chinese Bank v. 65.
 Liberator Society, *Re*, 134.
 Life Int. Corporation, Blumberg v. 393.
 Limoilou, Banque Jacques Cartier v. 391, 405.
 Litman v. Montreal C. & D. S. Bank. 199.
 Little, Bank of Montreal v. 187, 295.
 Liverpool Ins. Co., Todd v. 250.
 Llado v. Morgan, 14, 251.
 Lloyd's Bank, Deeley v. 289.
 Lloyd's Bank v. Swiss Bankverein, 212.
 Lock, Walter v. 129.
 Lockwood v. Ewer, 225, 271.
 Loma Mines, Ernest v. 44.
 Londesborough, Schofield v. 387.
 London, Birmingham, &c., Banking Co., *Re*, 222.
 London & Brazilian Bank, Société Coloniale v. 289.
 London & Canadian L. & A. Co. v. Duggan, 216.
 London Chartered Bank v. White, 211.
 London & C. Banking Co., Great W. Ry. Co. v. 418.
 London City Bank, Curtice v. 408.
 London City & M. Bank v. Gordon. 384, 418.
 London & County Bank, Picker v. 196.
 London & County Bank, Benneft v. 417.
 London & County-Bank, Chatterton v. 294.
 London & County Bank, Clarke v. 417.
 London & County Bank v. Groome, 404.
 London & County Bank, Mathiessen v. 417.
 London & County Bank v. River Plate Bank, 192.
 London Financial Association v. Kelk, 180.
 London Guarantee Co. v. Hochelaga Bank, 69.
 London Joint Stock Bank, Bentinck v. 186.
 London Joint Stock Bank, Sheffield v. 192, 194, 215.
 London Joint Stock Bank v. Simmons, 186, 194, 216, 256.
 London Joint Stock Bank, Simmons v. 194, 215.
 London Life v. Molsons Bank, 395.
 London, &c., Land Co., *Re*, 44.
 London & Midland Bank, Buckingham v. 202, 406.
 London & N. W. Ry. Co. v. Whinray, 70.
 London & S. W. Bank, Bavins v. 384.
 London & Southern Cos. F. L. Co., *Re*, 27.
 London Trading Bank, Bechuanaland Exp. Co. v. 195.
 Londonderry Ry. Co., Reg. v. 89.
 Lorant, Scadding v. 43.
 Lord v. Hunter, 396.
 Loupret, Molleur v. 366.
 Lovitt, The King v. 297, 367.
 Lovitt, Stavert v. 63, 145.
 Lovitt, Rex v. 104, 177.
 Lucas v. Dorrien, 213.
 Lyman v. Bank of U. C., 232.
 Lyons' Case, 44.
 Lyster's Case, 44.
 Lyttle's Iron Agency, Johnson v. 89, 92, 94.
 McAllister, Ontario Bank v. 210.
 McAllister, Peterboro Hydraulic Co. v. 210.
 Macbeth v. N. & S. Wales Bank, 395.
 McBride v. Gore Insurance Co., 250.
 McCabe, Blackley v. 202, 404, 407.
 McCaffrey v. Banque du Peuple, 234.
 McCallum, Sceally v. 190.
 McConnell, Ryan v. 183.
 McCrae v. Molsons Bank, 277.

- McCracken v. McIntyre, 79, 94.
 McCready Co. v. Alberta Clothing Co., 212.
 Macdonald, Bonar v. 69.
 McDonald, Can. Bk. of Commerce v. 230, 234.
 McDonald v. Rankin, 63, 205, 366.
 McDonell v. Bank of U. C., 232.
 McFarland v. Bank of Montreal, 307.
 McFarlane, Raphael v. 215.
 Macfarlane v. St. Cesaire, 190.
 McGibbon, Armstrong v. 52.
 McGeoch, Lawson v. 277, 278.
 McHugh v. Union Bank, 281.
 McIntyre, McCracken v. 79, 94.
 McIntyre, Sovereign Bank v. 87.
 McKain v. Birkbeck Co., 98.
 McKenzie v. Montreal, &c., Ry. Co., 194.
 McKewan, Garnett v. 178, 406.
 Mackay v. Commercial Bank, 63.
 Mackrell, Barber v. 279.
 Mackreth, Forster v. 385, 399.
 McLaren, Hornby v. 408.
 McLea, Day v. 393.
 McLean v. Clydesdale Bank, 407.
 McLeod, European Ry. Co. v. 29.
 McLister, Garden Gully Co., 93.
 McMillan, Stavert v. 206.
 McMulkin v. Traders Bank, 299.
 McMullen, Giblin v. 203.
 McMurray, Dickson v. 74.
 Macnider v. Young, 195.
 Macnider, Young v. 195.
 McPherson v. Copeland, 393.
 McPherson v. Temiskaming, 241.
 McRae, Hannum v. 129.
 McQuesten, Parker v. 366.
 McRoberts v. Steinoff, 277.
 McWhirter, Bank of Montreal v. 232.
 Madocks, Lewis v. 264.
 Mahony v. East Holyford Mining Co., 48.
 Maitland, Wilnot v. 15, 249, 267.
 Malcolm v. Scott, 399.
 Mallory's Case, 27, 86.
 Manchester Banking Co., Holland v. 295.
 Manchester & L. Banking Co., Walker v. 294.
 Manchester &c., Ry. Co., Bayley v. 64.
 Manchester L. & B. Co., Foxton v. 302.
 Mander v. Royal Can. Bank, 187, 295.
 Manning, Nasmith v. 29.
 Manning v. Purcell, 290.
 Marchant, Parker v. 289.
 Maritime Bank v. The Queen, 342.
 Maritime Bank v. Receiver-General, 212.
 Maritime Bank v. Union Bank, 396.
 Marjoribanks, Bellamy v. 409.
 Marler v. Molsoms Bank, 338, 403.
 Marler v. Stewart, 202, 404.
 Marseilles Extension Ry., *Re*, 47.
 Marsh v. Fulton County, 189.
 Marshall, Colonial Bank v. 387.
 Martin, Leese v. 211, 213.
 Marzetti v. Williams, 292, 405.
 Mason v. G. W. Ry. Co., 15, 267.
 Mason v. Johnston, 393.
 Massey Manufacturing Co., *Re*, 77.
 Massey and Lee's Case, 340.
 Mass. National Bank, Morse v. 65.
 Masson v. Merchants' Bank, 252.
 Mathiessen v. London & County Bank, 417.
 Matthews v. Brown, 417.
 Matthews, Common v. 29.
 Matthews v. Williams, 417.
 Maund, Campbell v. 74.
 Mayfield v. Wadsley, 10.
 Mead, *In re*, 188.
 Mechanics' Bank, Minor v. 70.
 Mechanics' Bank v. St. Jean, 334.
 Medewe, *Re*, 213.
 Merchants' Bank, Bathgate v. 234.
 Merchants' Bank, Banque Nationale v. 218.
 Merchants' Bank, Conn v. 335.
 Merchants, Bank v. Darveau, 200.
 Merchants' Bank v. Hancock, 251.
 Merchants' Bank, Masson v. 252.
 Merchants' Bank, Moffatt v. 201.
 Merchants' Bank, Perreault v. 292.
 Merchants' Bank, Radford v. 205.
 Merchants' Bank v. Smith, 6.
 Merchants' Bank, Smith v. 246.
 Merchants' Bank v. State Bank, 65, 391, 405.
 Merchants' Bank, Steinhoff v. 177, 198.
 Merchants' Bank, Suter v. 277.
 Merchants' Bank v. Whidden, 63.
 Merchants' M. Co., Armstrong v. 89, 92.
 Metropolitan Bank, Rumball v. 214.
 Mieville, Gorgier v. 196.
 Mill Dam Foundry v. Hovey, 231.
 Miller v. Austin, 188.
 Miller, Royal Can. Bank v. 249.
 Milloy v. Kerr, 13.
 Milvain, Bank of N. S. W. v. 292, 405.
 Minor v. Mechanics' Bank, 70.
 Misa v. Currie, 198, 214, 288.
 Mitchell v. Forster, 90.
 Mitchell, Humble v. 10, 84, 85.
 Moffatt, Bank of England v. 120.
 Moffatt v. Merchants' Bank, 201.
 Mollieur v. Loupret, 366.
 Molsons Bank v. Beandry, 261.
 Molsons Bank, Brush v. 183.

- Molsons Bank v. Carscaden, 200.
 Molsons Bank, Cooper v. 185.
 Molsons Bank, Dunspaugh v. 199.
 Molsons Bank, Grieve v. 61.
 Molsons Bank v. Heilig, 233.
 Molsons Bank v. Kennedy, 199.
 Molsons Bank v. Lanaud, 13.
 Molsons Bank, London Life v. 395.
 Molsons Bank, Marler v. 388, 403.
 Molsons Bank, McCrae v. 277.
 Molsons Bank, Ry. Adv. Co. v. 193.
 Molsons Bank, Ross v. 14, 276.
 Molsons Bank, Royal Trust Co. v. 287.
 Molsons Bank, Simpson v. 119.
 Molsons Bank v. Stoddart, 123.
 Molsons Bank, Thompson v. 213, 251.
 Monarch Bank, *Re*, 28, 29, 39.
 Montefiore, Atty.-Gen. v. 85.
 Monteith, *Re*, 14.
 Montgomery v. Ryan, 179, 282, 293, 306.
 M. O. & W. Ry. Co., Ottawa v. 190.
 Montreal C. & D. Savings Bank v. Geddes, 193.
 Montreal C. & D. Savings Bank, Litman v. 193, 199.
 Montreal Coffee House, Exchange Bank, v. 334.
 Montreal P. & B. Ry. Co., Desrosiers v. 194.
 Montreal Street Ry. Co., Leipschitz v. 397.
 Montreal, &c., Ry. Co., McKenzie v. 194.
 Montreal & St. Lawrence L. & P. Co. v. Robert, 48, 226.
 Moore & P. B. Harbor Co., *Re*, 53.
 Morgan, Leather M. Bank v. 294.
 Morgan, Llado v. 14, 251.
 Morley v. Culverwell, 181, 385.
 Morrice, Acraman v. 10.
 Morris, Union Bank v. 89.
 Morrison v. Bailey, 385.
 Morrison, Lake Superior Nav. Co. v. 29.
 Morse v. Mass. National Bank, 65.
 Morton and Block's Claims, 187.
 Muir v. Carter, 123, 214.
 Murray v. Pinkett, 223.
 Murray, Wills v. 72.
 Murray-Aynsley, Union Bank of Australia v. 211.
 Mutton v. Peat, 203, 289.
 Napier v. Bruce, 69.
 Nasmith, Boyd v. 202, 391, 404, 405.
 Nasmith v. Manning, 29.
 Nasmith's Case, 97, 205.
 Natal Investment Co., *Re*, 194.
 Nathan v. Ogdens, 393.
 National Bank, Bevan v. 419.
 National Bank, Brown v. 384.
 National Bank, Caldwell v. 66.
 National Bank, Kepitigalla v. 294.
 National Bank v. Silke, 411, 416.
 National Bank of Australasia v. Cherry, 208, 235.
 National Bank of Chicago v. Corcoran, 19, 251.
 National Bank of Scotland, Couper's Trustees v. 407.
 National Ins. Co. v. Hatton, 89.
 National Mercantile Bank v. Hampson, 266.
 Navulshaw v. Brownrigg, 256.
 Neelon v. Thorold, 94.
 Nelson Coke Co. v. Pellatt, 28, 86.
 Nesbitt, Rex v. 366, 368.
 Nevill, Heilbut v. 390.
 New Chili Gold M. Co., *Re*, 92, 94.
 New London Bank v. Brocklebank, 223.
 Newell, Bowen v. 385.
 Newfoundland Savings Bank, Gaden v. 203, 390, 400.
 Newhaven Local Board v. Newhaven School Board, 56.
 Newman, Atty.-Gen. v. 104.
 Nichols v. Fearson, 179.
 Nichols v. Ryan, 393.
 Nickle v. Douglas, 102.
 Nicolle Bank, Harrison v. 385.
 Nicolls, Burkinshaw v. 79, 89.
 N. B. Australian Co., Swan v. 192.
 New York Breweries Co., Atty.-Gen. v. 117.
 North of Scotland Co., Ireland v. 406.
 North & S. Wales Bank, Macbeth v. 395.
 North Sydney Co. v. Higgins, 89.
 N. W. Electric Co. v. Walsh, 79, 94.
 N. W. Transportation Co. v. Beatty, 74.
 North Western Bank, Cole v. 257, 258.
 North Western Bank v. Poynter, 253.
 Northern Crown Bank, Townsend v. 260, 261, 279.
 Northern Bank v. Yuen, 404.
 Norton v. Canadian Bank of Commerce, 201.
 Norton, Serle v. 404.
 Nowell, Exchange Bank v. 183.
 Noye Mfg. Co., Bank of Hamilton v. 14, 15, 250, 274.
 Oakbank Oil Co. v. Crum, 142.
 O'Dell v. Boston & N. S. Coal Co., 47.
 Official Receiver, Tailby v. 264.
 O'Gara v. Union Bank, 181.
 Ogden v. Benas, 415.
 Ogdens, Nathan v. 393.
 Ogle v. Knipe, 85.
 Oliver, Dominion Bank v. 232, 275.
 Ontario, *Re* Bank of, 74.

- Ontario Bank. *Re*, 307.
 Ontario Bank. *Re*, Barwick's Case, 331.
 Ontario Bank v. Chaplin, 334.
 Ontario Bank, Dobell v. 61.
 Ontario Bank v. McAllister, 210.
 Ontario Bank. *Re*, Massey & Lee's Case, 340.
 Ontario Bank v. O'Reilly, 252, 275.
 Ontario Bank, Saderquist v. 296.
 Ontario Bank, Union Bank v. 178.
 Ontario Express Co., *Re*, 94.
 Ontario Loan & Deb. Co., Purdom v. 73, 309.
 Ontario Marine Ins. Co. v. Ireland, 89.
 Ooregum Gold Mining Co. v. Roper, 79, 88.
 O'Reilly, Ontario Bank v. 252, 275.
 Oriental Bank, Prince v. 177, 178, 406.
 Orr v. Union Bank, 196.
 Ostiguy, Brunelle v. 391, 405.
 Ottawa v. M. O. & W. Ry. Co., 190.
 Ottoman Bank, Black v. 70.
 Ottos Kopje Diamond Mines. *Re*, 99.
 Oulton. *Re*, 402.
 Overell, Tidd v. 204.
 Overmann, Ronquette v. 181.
 Owens v. Quebec Bank, 201, 202, 394, 404.
 Owston v. Bank of N. S. W., 64.
 Pacaud, Banque du Peuple v. 185.
 Pagin & Gill's Case, 89.
 Panton & Cramp Steel Co., 99, 143.
 Pape v. Westcott, 393.
 Paquin, LaCompagnie Paquet v. 393.
 Parbury's Case, 79.
 Parker, Conflans S. Q. Co. v. 197.
 Parker v. McQuesten, 366.
 Parker v. Marchant, 289.
 Parker v. Staniland, 10.
 Parsons, Bank of England v. 120.
 Parsons v. Queen Ins. Co., 251.
 Patent Ivory Co., Howard v. 48.
 Patent Safety Gun Cotton Co. v. Wilson, 115.
 Pawle v. Gunn, 11.
 Peacock v. Pursell, 183.
 Pearce, Rolls v. 109.
 Peat, Mutton v. 203, 289.
 Pellatt's Case, 28, 86.
 Pellatt, Nelson Coke Co. v. 28, 86.
 Pendleton County v. Amy, 189.
 Pentelow's Case, 86.
 People's Bank Claim, 208.
 People's Bank, Exchange Bank v. 63.
 Peppercorne, Jones v. 213.
 Perkins, Bank of Toronto v. 208, 229, 231.
 Perkins v. Ross, 276.
 Perreault v. Merchants' Bank, 292.
 Peterboro Hydraulic Co. v. McAllister, 210.
 Petry v. La Caisse d'Economie, 215.
 Peuchen v. Imperial Bank, 272.
 Phillips v. Foxall, 70.
 Phillips, Glenwood Lumber Co. v. 241.
 Phillips, Harben v. 31, 43.
 Picker v. London County Bank, 196.
 Pickering, Heywood v. 202, 404.
 Pigot v. Cubley, 225, 271.
 Pinkett, Bobbett v. 410.
 Pinkett, Murray v. 223.
 Pontiac v. Ross, 190.
 Port Philip G. M. Co., Shaw v. 49.
 Portalis v. Tetley, 256, 258.
 Poston, Gibb v. 53.
 Pothonier v. Dawson, 225.
 Powers, Booth v. 386.
 Poynter, North Western Bank v. 253.
 Prefontaine v. Grenier, 146, 367.
 Prentice v. Consolidated Bank, 185.
 Price, Kenny v. 397.
 Prideaux v. Criddle, 404.
 Prince v. Oriental Bank, 177, 178, 406.
 Pritt, Security Nat. Bank v. 188, 296.
 Proctor, Trunkfield v. 383.
 Pulbrook v. Richmond Mining Co., 50.
 Purcell, Manning v. 290.
 Pursell, Peacock v. 183.
 Purdom v. Ont. Loan & Deb. Co., 73, 309.
 Quebec Bank v. Bergeron, 184.
 Quebec Bank, Coffey v. 14, 250.
 Quebec Bank, Exchange Bank v. 397.
 Quebec Bank, Imperial Paper Mills v. 264.
 Quebec Bank, Owens v. 201, 202, 394, 404.
 Quebec Bank, Rennie v. 11, 201, 233.
 Quebec Bank, Ward v. 182.
 Quebec Harbor Commissioners, Fry v. 252.
 Quebec S. Ry. Co., Sorel v. 173, 296.
 Queen, The v. Bank of Montreal, 177, 394.
 Queen, The v. Cotté, 366.
 Queen, The, Exchange Bank v. 342.
 Queen, The, Jacques Car. Bank v. 197.
 Queen The, Maritime Bank v. 342.
 Queen, The, Quirt v. 7.
 Queen, The v. Weir, 366.
 Queen Ins. Co., Parsons v. 251.
 Quirt v. The Queen, 7.
 Radford v. Merchants' Bank, 205.
 Railway Advertising Co. v. Molsons Bank, 193.
 Randolph v. Randolph, 208.
 Randolph Bank v. Hornblower, 401.
 Rankin, Bank of Montreal v. 55, 396.
 Rankin, McDonald v. 63, 205, 366.

- Raphael v. McFarlane, 215.
 Rastall, Straton v. 189.
 Rayner, *Re*, 85.
 Rear v. Imperial Bank, 405.
 Receiver-General, Maritime Bank v. 342.
 Redpath v. Kolfage, 202, 393, 404.
 Rees, Hughes v. 102.
 Reg. v. Bank of Nova Scotia, 341.
 Reg., Blackwood v. 297.
 Reg. v. Buntin, 369.
 Reg. v. Hazelton, 386.
 Reg. v. Hincks, 318, 366.
 Reg. v. Lambeth, 74.
 Reg. v. Londonderry Ry. Co., 89.
 Reg. v. Salop, 90.
 Reg. v. St. Pancras, 74.
 Reg. v. Wilson, 399.
 Reg. v. Wimbledon, 43, 74.
 Rennie v. Quebec Bank, 11, 201, 233.
 Rex v. Jackson, 386.
 Rex v. Lovitt, 104, 177.
 Rex v. Nesbitt, 366, 368.
 Rex v. Turner, 90.
 Reynolds, Vaisey v. 290.
 Rhind, Commercial Bank v. 294, 407.
 Rhind, Williamson v. 13.
 Rhodes v. Starnes, 366.
 Richard, The King v. 386.
 Richards v. Bank of B. N. A., 213.
 Richards v. Bank of Nova Scotia, 64.
 Riche, Ashbury Ry. Co. v. 49.
 Richer, Voyer v. 187, 295.
 Richmond Mining Co., Pulbrook v. 50.
 Riddel, Small v. 60.
 Riendeau, Campbell v. 404.
 Ritchie v. Vermillion M. Co., 50.
 Ritherdon, Stein v. 290.
 River Plate Bank, London & County Bank v. 192.
 Roberts, Cuthbert v. 214.
 Robarts, Goodwin v. 186, 194, 195.
 Robarts, Johnson v. 289.
 Robarts, Keane v. 301.
 Roberts v. Tucker, 290, 406.
 Robert, Montreal & St. L. Co. v. 48, 226.
 Roberts, Fisher v. 416.
 Robertson v. Banque d'Hochelaga, 92, 94.
 Robertson, Inglis v. 253.
 Robertson v. Lajoie, 256, 276.
 Robinson v. School Trustees, 190.
 Robshaw v. Smith, 129.
 Robson v. Bennett, 389.
 Rochester City Bank v. Elwood, 70.
 Rogers, Warwick v. 218.
 Rogers v. Whiteley, 291, 407.
 Rogerson v. Ladbroke, 408.
 Rolin v. Steward, 292, 405.
 Rolland v. Caisse d'Economie, 209.
 Rolls v. Pearce, 409.
 Romford Canal Co., *Re*, 194.
 Roper, Ooregum Gold M. Co. v. 79, 88.
 Rose-Belford Co. v. Bank of Montreal, 394.
 Ross v. Chandler, 303, 418.
 Ross v. Molsons Bank, 14, 276.
 Ross, Perkins v. 276.
 Ross, Pontiac v. 190.
 Ross, Royal Can. Bank v. 276.
 Ross v. Tyson, 182.
 Rothschild v. Corney, 404.
 Rouquette v. Overmann, 181.
 Roxton v. Eastern Townships Bk., 190.
 Royal Bank of India's Case, 42, 192.
 Royal Bank v. The King, 298.
 Royal Bank v. Tottenham, 400.
 Royal British Bank v. Turquand, 48.
 Royal Canadian Bank v. Carruthers, 250.
 Royal Canadian Bank, Cook v. 99.
 Royal Canadian Bank v. Cummer, 212, 232.
 Royal Canadian Bank v. G. T. Ry. Co., 9, 250.
 Royal Can. Bank, Mander v. 187, 295.
 Royal Canadian Bank v. Miller, 249.
 Royal Canadian Bank v. Ross, 276.
 Royal Canadian Bank v. Yates, 67.
 Royal Trust Co. v. Molsons Bank, 287.
 Royer, Banque Nationale v. 14, 253.
 Rudry Merthyr Co., Co. Gloucester Bank v. 48.
 Rumball v. Metropolitan Bank, 215.
 Runder, Hallen v. 10.
 Russo-Chinese Bank v. Li Yan Sam, 65.
 Ryan v. Bank of Montreal, 129, 197.
 Ryan, Chunder Sein v. 256.
 Ryan v. McConnell, 183.
 Ryan, Montgomery v. 179, 282, 293, 306.
 Ryan, Nichols v. 393.
 Ryde, Jones v. 179.
 Sac Co., Cromwell v. 191.
 Saderquist v. Ontario Bank, 296.
 Sadler, Howard v. 50.
 Saffrey, Welton v. 79, 89.
 Salomon v. Salomon, 75.
 Salop, Reg. v. 90.
 Sandeman, Deverges v. 225, 271.
 Sanderson v. Austin, 70.
 Sanitary Carbon Co., *Re*, 33.
 Sankey, Lee v. 300.
 Sarazin v. Bank of St. Hyacinthe, 21, 210.
 Sawyer v. Thomas, 202, 404.
 Scadding v. Lorant, 43.
 Sceally v. McCallum, 190.
 Schenck, Supervisors v. 189.
 Schlenker, Boddington v. 396, 409.

- Schofield, *Ex parte*, 198.
 Schofield v. Londesborough, 387.
 School Trustees of St. John. Robinson v. 190.
 Schroeder v. Central Bank, 400.
 Schuler, Edelstein v. 195.
 Scott v. Bank of N. B. 297.
 Scott, Bank of Upper Canada v. 238.
 Scott, Brandon v. 301.
 Scott, Malcolm v. 339.
 Scottish Petroleum Co., *Re*, 29, 55.
 Security National Bank v. Pritt, 188, 296.
 Seeley v. Cox, 64.
 Semple v. Kyle, 407.
 Senecal v. Exchange Bank, 334.
 Serle v. Norton, 404.
 Serrell v. Derbyshire Ry. Co., 404.
 Sewell v. Burdick, 9.
 Shand, Cummings v. 406.
 Sharp, Allen v. 179.
 Sharp v. Dawes, 33.
 Shaw v. Bunny, 236.
 Shaw v. Crawford, 182.
 Shaw v. Port Philip G. M. Co., 49.
 Shaw v. Spencer, 215.
 Sheffield v. London Joint Stock Bank, 192, 194, 215.
 Sheffield Corp. v. Barclay, 98.
 Shepherd, Bank of Hamilton v. 274.
 Sheppard v. Union Bank, 256.
 Siggers, Heseltine v. 10, 196.
 Silke, National Bank v. 411, 416.
 Simard, Henry v. 53.
 Simmons v. London Joint Stock Bank, 215.
 Simmons, London Joint Stock Bank v. 186, 194, 216, 256.
 Simmons v. Taylor, 410.
 Simpson, Bank of Montreal v. 85.
 Simpson v. Dolan, 199.
 Simpson v. Molsons Bank, 119.
 Simson v. Ingham, 178, 289.
 Small v. Riddel, 60.
 Smart v. Bowmanville Machine Co., 89.
 Smith, Bainbridge v. 50.
 Smith v. Bank of Nova Scotia, 98, 99.
 Smith, Chambers v. 90.
 Smith, Conn v. 280.
 Smith, Hill v. 290, 406.
 Smith v. Hull Glass Co., 60.
 Smith v. Leveaux, 288.
 Smith v. Merchants Bank, 246.
 Smith, Merchants Bank v. 6.
 Smith, Robshaw v. 129.
 Smith v. Surman, 10.
 Smith v. Union Bank of London, 110.
 Smith v. Walkerville Iron Co., 97.
 Smith, Wentworth v. 178, 291, 298.
 Smyth, Lang v. 196.
 Société Coloniale v. London & Brazilian Bank, 289.
 Société Generale v. Tramways Co., 120.
 Sorel v. Quebec Southern Ry. Co., 173, 296.
 South Australian Banking Co., Ayers v. 205, 235.
 South Western Bank, Bavins v. 384, 417.
 Sovereign Co. v. Whitside, 56.
 Sovereign Bank v. McIntyre, 87.
 Spargo's Case, 88.
 Spencer, Shaw v. 215.
 Spincer v. Spincer, 407.
 Spinney, Union Bank v. 267.
 Spitta, Wienholt v. 407.
 Spratley, Watson v. 10.
 Springer v. Exchange Bank, 68.
 St. Cessaire v. Macfarlane, 190.
 St. Jean, Mechanics' Bank v. 334.
 St. Lawrence F. Ins. Co., Bank of Toronto v. 173, 296.
 St. Louis, Dufresne v. 393.
 St. Pancras, Reg. v. 74.
 St. Regis Paper Co. v. Tonawanda Co., 401.
 Staniland v. Parker, 10.
 Starkey v. Bank of England, 98.
 Starnes, Rhodes v. 366.
 State Bank, Merchants' Bank v. 65, 391, 405.
 Stavert v. Lovitt, 63, 145.
 Stavert v. McMillan, 206.
 Stein v. Ritherdon, 290.
 Steinhoff v. Merchants' Bank, 177, 198.
 Steinhoff, McRoberts v. 277.
 Stenning, Wood v. 301.
 Stephenson, Innes v. 301.
 Stephenson, Wood v. 385, 393.
 Sterling, Clarkson v. 277.
 Stevenson, Can. Bank of Commerce v. 256.
 Steward, Rolin v. 292, 405.
 Stewart v. Lee, 409.
 Stewart, Marler v. 202, 404.
 Stewart v. Union Bank, 233.
 Stikeman, Thomson v. 234.
 Stinson, Exchange Bank v. 334.
 Stoddart, Molsons Bank v. 123.
 Stone v. City & County Bank, 205.
 Straton v. Rantall, 189.
 Street, Carpenter v. 385.
 Stringer, *Ex parte*, 222.
 Succession Duty Act, *Re*, 297.
 Suckling, Donald v. 225.
 Supervisors v. Schenck, 189.
 Surman, Smith v. 10.
 Surrey, Wiltshire v. 189.
 Suter v. Merchants' Bank, 277.
 Sutton, Charitable Corporation v. 46.

- Sutton v. Eng. & C. P. Co., 50.
 Swan v. N. B. Australian Co., 192.
 Sweeny, Bank of Montreal v. 215, 223.
 Sylvester, Cockburn v. 251, 275.
 Symonds, Walker v. 300.
 Tahiti Cotton Co., *Re*, 98.
 Tahourdin, Isle of Wight Ry. Co. v. 73.
 Tailby v. The Official Receiver, 264.
 Tamar Ry Co., D'Arcy v. 26, 47.
 Tassell v. Cooper, 129.
 Taurine Co., *Re*, 49.
 Taylor, Simmons v. 410.
 Teague, Howbeach Coal Co. v. 27, 44.
 Teale v. Brown, 178, 214.
 Temiskaming, McPherson v. 241.
 Temple, Hirachand v. 393.
 Tennant v. Union Bank, 6, 14, 94, 118, 246, 247, 249, 252, 269, 277.
 Terry, Yates v. 291.
 Tetley, Portalis v. 256, 258.
 Tetrault, Baril v. 396.
 Thibaudeau v. Beaudoin, 207.
 Thien v. Bank of B. N. A., 208, 230.
 Thomas, Bank of Montreal v. 200.
 Thomas, Sawyer v. 202, 404.
 Thompson v. Bank of N. S., 64.
 Thompson v. Bell, 64.
 Thompson, Kirkwood v. 236.
 Thompson v. Molsons Bank, 213, 251.
 Thomson v. Stikeman, 234.
 Thornton, Anderson v. 69.
 Thorold, Neelon v. 94.
 Tidd, *In re*, 204.
 Tidd v. Overell, 204.
 Todd v. Liverpool Ins. Co., 250.
 Todd v. Union Bank, 292, 405.
 Tonawanda Co., St. Regis Paper Co. v. 401.
 Toronto Brewing Co. v. Blake, 53, 56.
 Toronto Club v. Dominion Bank, 303.
 Toronto Cream & Butter Co. v. Crown Bank, 275.
 Toronto General Trusts v. Central Ont. Ry., 226.
 Torrance, Bain v. 178, 304.
 Torrance v. Bank of B. N. A., 199.
 Tottenham, Royal Bank v. 400.
 Towgood, Anson v. 129.
 Towle, Way v. 385.
 Townsend v. Northern Crown Bank, 260, 261, 279.
 Traders Bank v. Brown, 249.
 Traders Bank, Chew v. 200.
 Traders Bank, McMulkin v. 299.
 Tramways Union Co., Société Generale v. 120.
 Treacher v. Treacher, 260.
 Trout's Case, 233.
 Truman's Case, 27.
 Trunkfield v. Proctor, 383.
 Trust & Loan Co. v. Hamilton, 190.
 Tucker, Roberts v. 290, 406.
 Tucker v. Wilson, 225, 271.
 Tuckett, Wright v. 143.
 Tudhope, Bank of Montreal v. 266.
 Turner, Rex v. 90.
 Turquand, Royal British Bank v. 48.
 Tyson, Ross v. 182.
 Union Bank & Chinic, 223.
 Union Bank v. Code, 89.
 Union Bank, Dominion Bank v. 395.
 Union Bank v. Elliott, 183.
 Union Bank, Fine Art Society v. 197.
 Union Bank, Fournier v. 396.
 Union Bank, McHugh v. 281.
 Union Bank, Maritime Bank v. 396.
 Union Bank v. Morris, 89.
 Union Bank, O'Gara v. 181.
 Union Bank v. Ontario Bank, 178.
 Union Bank, Orr v. 196.
 Union Bank, Sheppard v. 256.
 Union Bank, Smith v. 410.
 Union Bank v. Spinney, 267.
 Union Bank, Stewart v. 233.
 Union Bank, Tennant v. 6, 14, 94, 118, 246, 247, 249, 252, 269, 277.
 Union Bank, Todd v. 292, 405.
 Union Bank, Walsh v. 96.
 Union Bank of Australia, Irvine v. 49, 71.
 Union Bank of Australia v. Murray-Aynsley, 211.
 U. S. v. Bank of Columbus, 65.
 Vagliano v. Bank of England, 290, 294, 406.
 Valpy, *Ex parte*, 134.
 Vaisey v. Reynolds, 290.
 Van Wart v. Wooley, 198.
 Veal v. Veal, 399.
 Veasey, Hardy v. 129.
 Venables v. Baring, 196.
 Vere, Edwards v. 287.
 Vermillion Mining Co., Ritchie v. 50.
 Victor Varnish Co., *Re*, 224, 260.
 Vinden v. Hughes, 395.
 Voyer v. Richer, 187, 295.
 Waddell, Court v. 331.
 Wadsley, Mayfield v. 10.
 Wakefield v. Alexander, 400.
 Walker v. Manchester & L. Banking Co., 294.
 Walker v. Symonds, 300.
 Walkerville Iron Co., Smith v. 97.
 Wallace's Case, 27.
 Wallace v. Kelsall, 300.
 Waller v. Lock, 129.
 Walsh, N. W. Electric Co. v. 79, 94.
 Walsh v. Union Bank, 96.
 Wandsworth Co. v. Wright, 32, 73.
 Ward, Leduc v. 9.

- Ward v. Quebec Bank, 182.
 Warren. Bank of B. N. A. v. 289, 395, 404.
 Warwick v. Rogers, 218.
 Watson, Jonmenjoy, 183, 274.
 Watson v. Spratley, 10.
 Watts v. Wells, 201.
 Way v. Towle, 385.
 Webb v. Commissioners of Herne Bay, 189, 194.
 Weir v. Bell, 49.
 Weir, The Queen v. 366.
 Wells' Case, 334.
 Wells, Watts v. 201.
 Welton v. Saffery, 79, 89.
 Wentworth v. Smith, 178, 291, 298.
 West, Embury v. 277.
 West of England Bank, *In re*, 201.
 Westbrook, Kemp v. 271.
 Westcott, Pape v. 393.
 Westminster Bank v. Wheaton, 385.
 Whalen, Dunn v. 401.
 Wheeler v. Young, 404.
 Whidden, Merchants' Bank v. 63.
 Whinney, Colonial Bank v. 85.
 Whinray, London & N. W. Ry. Co. v. 70.
 Whitaker v. Bank of England, 292, 405.
 White's Case, 89.
 White, London Chartered Bank v. 211.
 Whiteley, Rogers v. 291, 407.
 Whiteside, Sovereign Co. v. 56.
 Whitworth, Jewan v. 256.
 Widmer, Bank of U. C. v. 46.
 Wienholt v. Spitta, 407.
 Wild v. Bank of Passamaquoddy, 65.
 Wilder v. Wolf, 408.
 Willan, Colonial Bank v. 48.
 Williams, *Re*, 289.
 Williams v. Colonial Bank, 97.
 Williams, Kilsby v. 406.
 Williams, Marzetti v. 292, 405.
 Williams, Matthews v. 417.
 Williamson v. Rhind, 13.
 Willis v. Bank of England, 177.
 Wills v. Murray, 72.
 Wilmot, Bank of Toronto v. 67.
 Wilmot v. Maitland, 15, 249, 267.
 Wilson v. Banque Ville Marie, 396.
 Wilson, Canadian Bank of Commerce v. 275.
 Wilson v. Citizens Ins. Co., 252.
 Wilson v. Hirst, 289.
 Wilson, Patent Safety Co. v. 415.
 Wilson, Reg. v. 399.
 Wilson, Tucker v. 225, 271.
 Wiltshire v. Surrey, 189.
 Wimbledon, Reg. v. 43, 74.
 Winans v. Atty.Gen., 104.
 Windsor v. Commercial Bank, 147.
 Wisconsin Bank v. Bank B. N. A., 201.
 Wolf, Wilder v. 408.
 Womersley, Gurney v. 179, 181.
 Wood v. Stenning, 301.
 Wood v. Stephenson, 385, 393.
 Woodland v. Fear, 177, 181, 406.
 Woodruff v. Atty.-Gen., 104.
 Woodward, Bank of Commerce v. 185.
 Wooley, Van Wart v. 198.
 Wright's Case, 71.
 Wright v. Tuckett, 143.
 Wright, Wandsworth Co. v. 32, 73.
 Yardley, Fourth St. Bank v. 399.
 Yates, Royal Can. Bank v. 67.
 Yates v. Terry, 291.
 Yernen, Harron v. 236.
 Yuill v. Greymouth Paint Co. 47.
 Young v. Cole, 189.
 Young v. Grote, 399.
 Young v. Higgon, 90.
 Young v. Macnider, 195.
 Young, Macnider v. 195.
 Young, Wheeler v. 404.
 Yuen, Northern Bank v. 404.
 Ziegler, Detroit Savings Bank v. 70.

STATUTES CITED.

IMPERIAL.

Statute of Frauds, pp. 10, 66.
 Crossed Cheques Act, 1856, p. 410.
 Crossed Cheques Act, 1858, p. 410.
 24-25 V. c. 98, p. 413.
 Companies Act, 1862, p. 120.
 B. N. A. Act, 1867, pp. 2, 6, 95, 101,
 246, 283, 287.
 Crossed Cheques Act, 1876, p. 410.
 Factors Act, 1877, p. 15.
 Bills of Exchange Act, 1882, pp. 382,
 409, 411, 415, 418.
 Factors Act, 1889, p. 255.
 Merchant Shipping Act, 1894, p. 230.
 6 Edw. VII. c. 17, pp. 418, 419.

CANADIAN.

Bank Act, 1842, p. 231.
 1850, p. 227.
 C. S. C. c. 50, p. 255.
 c. 54, pp. 1, 13, 246,
 249, 250.
 c. 55, p. 1.
 c. 58, p. 281.
 1861, pp. 1, 13.
 1866, p. 1.
 1867, pp. 2, 281.
 1869, p. 2.
 1870, p. 2.
 1871, pp. 2, 45, 98, 107, 118,
 193, 207, 229, 365.
 1872, p. 243.
 1879, p. 193.
 1880, pp. 2, 13, 370.
 1883, p. 370.
 1886, pp. 3, 14, 178, 179, 187,
 190, 217, 233, 234, 247,
 266, 276, 340, 342, 353.
 1890, pp. 3, 4, 9, 14, 17, 44,
 81, 128, 236, 281.
 1900, pp. 3, 10, 17, 21, 128,
 440.
 Forgery Act, 1869, p. 410.
 18 V. c. 80, p. 189.
 31 V. c. 11, pp. 250, 410, 413.
 51 V. c. 27, p. 14.
 53 V. c. 34, p. 281.
 57-58 V. c. 60, p. 230.

62-63 V. c. 14, pp. 3, 160.
 63-64 V. c. 26, pp. 3, 5, 17.
 29, p. 165.
 93, pp. 7, 131, 150, 220, 434,
 448, 449.
 3 Edw. 7, c. 4, p. 3.
 61, p. 4.
 4 Edw. 7, c. 3, p. 3.
 4-5 Edw. 7, c. 4, pp. 3, 44.
 6 Edw. 7, c. 127, pp. 29, 418, 419.
 6-7 Edw. 7, c. 43, p. 4.
 7-8 Edw. 7, c. 7, pp. 4, 150.
 9-10-Edw. 7, c. 14, pp. 171, 420.
 10 Edw. 7, c. 63, p. 184.
 64, p. 110.
 1-2 Geo. 5, c. 4, pp. 5, 21.
 2 Geo. 5, c. 5, pp. 5, 21, 150.
 3-4 Geo. 5, c. 9, pp. 19, 21, 384.
 c. 42, pp. 8, 384.
 R. S. C. c. 1, pp. 4, 27, 32, 75, 122, 217,
 263, 300, 306, 371.
 23, p. 11.
 26, p. 422.
 27, pp. 147, 171, 431.
 29, pp. 4, 17, 84, 178, 247,
 266, 276, 280, 372.
 30, pp. 8, 19, 286, 384.
 31, pp. 8, 19, 384, 410.
 32, pp. 8, 286.
 37, p. 107.
 79, pp. 51, 89, 93, 193.
 113, pp. 230, 243, 244.
 118, pp. 9, 439.
 119, (Bills of Exchange Act),
 pp. 172, 217, 274, 288,
 382, 400, 409.
 122, p. 283.
 144, pp. 166, 242, 329, 331,
 337.
 146, (Criminal Code),
 sec. 164, p. 413.
 191, p. 305.
 405, p. 386.
 412, *et seq.*, p. 368.
 425, 427, p. 356.
 426, p. 357.
 468 (r), p. 410.
 1035, 1052, p. 305.
 155, p. 367.
 165, p. 410.

ONTARIO.

- 33 V. c. 19, pp. 9, 250.
 R. S. O. 1897, c. 53, p. 119.
 122, pp. 4, 6.
 150, p. 257.
 205, p. 119.
 Statute 1910, c. 50, p. 257.
 63, p. 184.
 66, p. 255.
 Statute 1913, c. 19, pp. 191, 242.
 R. S. O. 1914, c. 109, pp. 173, 193, 296.
 133, pp. 246, 392.
 137, p. 255.
 192, p. 189.
-

QUEBEC.

- C. S. L. C. c. 91, p. 117.
 Civil Code,
 Art. 14, p. 272.
 249, 325, 338, 347, p. 116.
 387, p. 85.
 429-42, p. 267.
 650a, p. 115.
 1069, 1077, p. 191.
 1100-1, p. 301.
 1191d, p. 113.
 1233, p. 66.
 1272, p. 112.
 1487-90, p. 195.
 1488-9, p. 258.
 1570-1, pp. 173, 296.
 1573-4, p. 184.
 1716, p. 123.
 1740, pp. 255, 257.
 1892, 1897, p. 408.
 1950, p. 185.
 1959, pp. 183, 233.
 1971, pp. 225, 271.
 1975, 1978, p. 211.
 1994-2000, pp. 268, 269.
 2268, p. 258.
 2349, p. 384.
 2352, p. 402.
 Code of Civil Procedure,
 Art. 80, p. 117.
 566, p. 107.
 642, p. 107.
 853, p. 110.
 955, p. 242.
 987, p. 53.

- Municipal Code,
 Arts. 981-7, p. 189.
 Bank Tax Act, 1882, p. 7.
 R. S. Q. Arts. 4629-30, p. 189.
 5643-50, p. 246.
 42-43 V. c. 19, p. 258.
 55-56 V. c. 17, p. 113.
 10 Edw. 7, c. 64, p. 110.
-

NOVA SCOTIA.

- R. S. N. S. c. 155, pp. 173, 296.
-

NEW BRUNSWICK.

- C. S. N. B. c. 111, pp. 173, 296.
 169, p. 189.
-

MANITOBA.

- R. S. Man. c. 40, pp. 173, 296.
 1913, c. 37, p. 189.
-

BRITISH COLUMBIA.

- R. S. B. C. c. 170, p. 190.
-

ALBERTA.

- 1911-12, c. 3, p. 190.
-

SASKATCHEWAN.

- R. S. Sask. c. 146, pp. 173, 190, 296.
 148, p. 256.
-

N.-W. TERRITORIES.

- Cons. Ord. c. 41, pp. 173, 296.

ABBREVIATIONS.

A. & E.....	Adolphus & Ellis' Reports, King's Bench.
A. C.....	Appeal Cases, Law Reports, 1875-1913.
Alta. L. R.....	Alberta Law Reports, 1907-13.
Am.....	Amended by the Bank Act, 1913.
B. & Ad.....	Barnewall & Adolphus, King's Bench.
B. & Ald.....	Barnewall & Alderson, King's Bench.
B. & C.....	Barnewall & Cresswell, King's Bench.
B. & S.....	Best & Smith's Reports, King's Bench.
B. C. R.....	British Columbia Reports.
B. N. A. Act.....	British North America Act, 1867.
Beav.....	Beavan's Rolls' Reports.
Bing. N. C.....	Bingham's New Cases, Common Pleas.
C. & K.....	Carrington & Kirwan's Reports. <i>Nisi Prius</i> .
C. B.....	Common Bench Reports.
C. B. N. S.....	Common Bench Reports (New Series).
C. C.....	Civil Code, Quebec.
C. L. J.....	Canada Law Journal, Toronto.
C. L. T.....	Canadian Law Times, Occasional Notes.
C. P. D.....	Law Reports, 1865-9—Common Pleas Division.
C. S. N. B.....	Consolidated Statutes of New Brunswick, 1903.
Camp.....	Campbell's Reports. <i>Nisi Prius</i> .
Ch. D.....	Law Reports, 1875-90, Chancery Division.
Cl. & F.....	Clark & Finnelly's Reports, House of Lords.
Cr. M. & R.....	Crompton, Meeson & Roscoe's Reports, Exchequer.
DeG. M. & G.....	DeGex, Macnaghten & Gordon's Reports.
Dorion.....	Dorion's Queen's Bench Reports, Montreal.
E. L. R.....	Eastern Law Reporter, 1905-13.
E. & B.....	Ellis & Blackburn's Reports, King's Bench.
E. & I. App.....	Law Reports, 1865-75, English and Irish Appeals.
Ex.....	Exchequer Reports, Welsby, Hurlstone & Gordon.
Ex. D.....	Law Reports, 1875-9, Exchequer Division.
F. & F.....	Foster & Finlason's Reports. <i>Nisi Prius</i> .
Gen. Ord. N. W. T.	General Ordinances, North-West Territories, 1905.
Grant.....	Chancery Reports, Upper Canada.
H. & C.....	Hurlstone & Coltman's Reports, Exchequer.
H. & N.....	Hurlstone & Norman's Reports, Exchequer.
H. L. C.....	House of Lord's Cases, Clark.
Jur. N. S.....	Jurist, English, New Series.
J. & H.....	Johnson & Hemming's Reports, Chancery.
L. C. J.....	Lower Canada Jurist.
L. C. R.....	Lower Canada Reports.
L. J.....	Law Journal, English.
L. N.....	Legal News, Montreal.
L. R. C. C.....	Law Reports, 1865-75, Crown Cases Reserved.
L. R. Ch.....	Law Reports, 1865-75, Chancery Appeal Cases.
L. R. Eq.....	Law Reports, 1865-75, Equity Cases.
L. R. Ex.....	Law Reports, 1865-75, Exchequer Cases.
L. R. H. L.....	Law Reports, 1865-75, House of Lords Cases.
L. R. P. C.....	Law Reports, 1865-75, Privy Council Cases.
L. R. Q. B.....	Law Reports, 1865-75, Queen's Bench Cases.
L. T. N. S.....	Law Times Reports, New Series.
M. & Gr.....	Manning & Granger's Reports, Common Pleas.
M. & M.....	Moody & Malkin's Reports, <i>Nisi Prius</i> .

- M. & Rob. Moody & Robinson's Reports, *Nisi Prius*.
M. & W. Meeson & Welsby's Reports, Exchequer.
M. L. R.—Q. B. Montreal Law Reports, Queen's Bench.
M. L. R.—S. C. Montreal Law Reports, Superior Court.
Man. R. Manitoba Law Reports.
Mod. Modern Reports, 1669-1755.
Moore. Moore's Privy Council Reports.
N. B. New Brunswick Reports.
N. S. Nova Scotia Reports.
N. Y. New York Reports.
O. L. R. Ontario Law Reports, 1901-13.
O. R. Ontario Reports, 1882-1900.
Ont. A. R. Ontario Appeal Reports, 1870-1900.
Ont. P. R. Ontario Practice Reports, 1856-1900.
O. W. N. Ontario Weekly Notes, 1909-13.
O. W. R. Ontario Weekly Reporter, 1902-13.
P. & B. Pugsley & Burbidge, New Brunswick.
P. R. Practice Reports, Upper Canada.
Q. B. Queen's Bench Reports.
Q. B. D. Law Reports, 1875-90, Queen's Bench Division.
Q. L. R. Quebec Law Reports.
Q. R.—Q. B.—K. B. Quebec Official Reports (Rapports Judiciaires Officiels) Queen's Bench—King's Bench.
Q. R.—S. C. *Ibid*—Superior Court.
R. L. Revue Legale, Montreal.
R. S. B. C. Revised Statutes of British Columbia, 1911.
R. S. C. Revised Statutes of Canada, 1906.
R. S. Man. Revised Statutes of Manitoba, 1902.
R. S. O. Revised Statutes of Ontario, 1914.
R. S. Q. Revised Statutes of Quebec, 1888.
R. S. Sask. Revised Statutes of Saskatchewan, 1909.
S. C. Can. Supreme Court of Canada Reports.
Sess. Cas. Sessions Cases, Scotland.
T. L. R. London Times Law Reports.
T. R. Term Reports, Durnford & East.
Terr. L. R. Territories Law Reports, 1885-1905.
Taunt. Taunton's Reports, Common Pleas.
U. C. C. P. Upper Canada Common Pleas Reports.
U. C. O. S. Upper Canada Reports, Old Series.
U. C. Q. B. Upper Canada Queen's Bench Reports.
U. S. United States Supreme Court Reports.
V. L. R. Victoria Law Reports.
W. L. R. Western Law Reporter, 1905-13.
W. N. Weekly Notes, English.
W. R. Weekly Reporter, English.

THE BANK ACT, CANADA

3-4 GEORGE V., CHAPTER 9.

AN ACT RESPECTING BANKS AND BANKING.

*Assented to 6th June, 1913; came into force 1st July,
1913.*

SHORT TITLE.

1. This Act may be cited as *The Bank Act*. 53 V., c. 31, s. 1.

Before Confederation the banks doing business in the old province of Canada were governed by their special charters and by the provisions of chapters 54 and 55 of the Consolidated Statutes of Canada, intituled respectively "An Act respecting Incorporated Banks," and "An Act respecting Banks and Freedom of Banking," and by amending Acts passed in 1861 and 1866. These charters were granted usually for a term of ten years at a time, most of them expiring at the end of the session of Parliament after the first of June, 1870. The provisions of these special charters were not always uniform.

In the old Province of Nova Scotia there was no general banking Act, special provisions being embodied in the respective charters, which were, as a rule, granted for fifteen years at a time, terminating at different periods.

New Brunswick, the remaining province which made up the original Dominion in 1867, like Nova Scotia, had

no general Act, but had granted charters for terms varying from twelve to twenty-six years.

When British Columbia joined the Dominion in 1871, it had the Bank of British Columbia, which was organized in 1872 under an Imperial charter, with its head office in London, England.

Prince Edward Island became a province of the Dominion in 1873, and had then three banks with special charters, which had been extended to 1890, 1892, and 1900, respectively.

By the British North America Act, section 91, subsection 15, the right to legislate respecting "Banking, Incorporation of Banks, and the Issue of Paper Money" was assigned exclusively to the Dominion Parliament. At its first session in 1867, it passed the Act, 31 Viet. chap. 11, which gave the banks of Upper and Lower Canada, Nova Scotia and New Brunswick the right to do business throughout the Dominion until 1870, under certain regulations and restrictions. In 1869, by the Act 32-33 Viet. chap. 49, these provisions were still further extended, and certain expiring bank charters continued temporarily. In 1870 the Act of 1867 was extended until 1872, by the Act 33 Viet. chap. 11, which introduced certain new provisions for the protection of the interests of shareholders and of the public. In 1871 the first comprehensive Dominion Banking Act, 34 Viet. chap. 5, was passed. It was made applicable to ten banks having their head office in Quebec, six in Ontario, and three in Nova Scotia, and continued their charters until July 1st, 1881. It also applied in part to the Bank of British North America which had an Imperial charter, and to La Banque du Peuple, which was organized as a limited partnership or partnership *en commandite*. In 1880, by 43 Viet. chap. 22, the Act of 1871, with certain amendments, was continued until July 1st, 1891, and was declared to be applicable to the thirty-six banks therein named, of which sixteen had their head office in Quebec, nine in Ontario, nine in Nova Scotia, and two in New Brunswick.

When the Dominion Statutes were consolidated in 1886, the laws then in force on the subject became chapter 120 of the Revised Statutes of Canada intituled "An Act respecting Banks and Banking." On the first of July, 1891, this was superseded by the Act of 1890, which came into force on that day by virtue of section 104, and which extended the bank charters to the 1st of July, 1901.

In 1899, by 62-63 Vict. chap. 14, Canadian banks were authorized to issue bank notes of one pound sterling or of any multiple of that sum at their offices in any British colony or possession other than Canada, and to make them redeemable at such offices, or in Canada in case they closed such other offices. This Act was repealed in 1904, by 4 Edw. VII., chap. 3, which made fuller and more detailed provisions regarding offices and sterling notes in other British colonies or possessions. These are now found in section 62 of the present Act.

In 1900 the Bank Act was revised in view of the approaching expiry of the Bank charters in 1901, and The Bank Act Amendment Act, 63-64 Vict. chap. 26, was passed, which embodied certain important changes and extended the charters to the 1st of July, 1911. Provisions as to the business and powers of a bank were extended, further returns and statements were provided for, and authority was given to the Canadian Bankers' Association, incorporated during the same session, to appoint a curator to a suspended bank. Provision was also made for the purchase of the assets of one bank by another, and by a supplementary Act for any increase of the capital stock of the purchasing bank rendered necessary thereby.

In 1903, the Penny Bank Act, 3 Edw. VII., chap. 4, was passed, which will be found in the Appendix. These banks do not come under the present Act.

In 1905, by 4-5 Edw. VII., chap. 4, provision was made for having more than ten directors, and for electing one of them as honorary president.

The Bank Act of 1890 and the foregoing amending Acts were revised and consolidated by the commissioners for revising the Dominion Statutes, as Chapter 29 of the Revised Statutes of Canada, 1906, which came into force by proclamation and statute on the 31st of January, 1907. The revisers omitted obsolete provisions, rearranged, divided, and sub-divided a number of the sections and changed the order and position of not a few, introduced new definitions, and made other minor changes. In order to facilitate references in decisions under former Acts to the corresponding provisions of the present Act, a concordance will be found after the table of contents in the Introduction.

The revision was made under the authority of the Act of 1903, 3 Edw. VII., chap. 61, which provides that such alterations might be made in the language of the statutes consolidated as were requisite to preserve a uniform mode of expression, and that such minor amendments might be made as were necessary to bring out more clearly the intention of Parliament, or to reconcile seemingly inconsistent enactments or to correct clerical or typographical errors.

The Statute bringing the Revised Statutes into force, assented to January 30th, 1907, provides by section 7 that they are not to operate as new laws but to be construed and have effect as declaratory of the old law; but if on any point they are in effect not the same as those for which they are substituted, the provisions in them shall prevail as to all matters subsequent to January 31st, 1907.

By section 21 of the Interpretation Act, R. S. C. chap. 1, it is declared that Parliament by re-enacting, revising or consolidating any Act shall not be deemed to have adopted the construction which has, by judicial decision or otherwise, been placed upon the language used in such Act, or upon similar language.

In 1908 an Act, 7-8 Edw. VII., chap. 7, was passed amending section 61, and authorizing an increased issue

of notes during the usual season of moving the crops, that is from October 1st to January 31st, and providing a penalty for neglect to make a return of such increased issue.

In 1911 a Bill was introduced to revise and renew the Bank Act, but it was not passed, and a short Act, 1-2 Geo. V., chap. 4, was adopted, continuing the bank charters until the 1st July, 1912. In 1912 the matter was not proceeded with, but another short Act, 2 Geo. V., chap. 5, was passed, continuing the charters until the 1st of July, 1913.

In 1913 a new Bill was introduced and thoroughly discussed in Parliament and in Committee, and the present Act was the result. About one-half the sections have been amended in some respect. Most of the changes are of minor importance, many of them merely verbal. Among the more important amendments may be mentioned: (1) more stringent provisions as to the organization of new banks, and the payment of preliminary expenses: sections 12 to 17, 36, 37, and 131A; (2) more full and detailed annual and special statements by the directors to the shareholders: sections 54 and 55; (3) provisions for a shareholders' audit: sections 56 and 56A; (4) the issue and circulation of notes, and the establishment of central gold reserves: section 61; (5) taking security from a farmer on his threshed grain: section 88; (6) further information in the returns to the Government: sections 79, 112 and 114; (7) giving or accepting a bribe in connection with the business of a bank: section 131; (8) pledging the notes of a suspended bank, or paying a debt of liability: section 146A and 146B; (9) prohibiting the use of the equivalents in a foreign language of the words "bank," "banker," etc., in a sign or advertisement of a business not authorized by the Act: section 156; (10) the omission and repeal of the old section 56 prohibiting the inspection of the account of a customer, by others than directors. These and other changes will be considered under their respective sections.

The right of the Dominion Parliament to pass the Acts of 1880 and 1890 was challenged as an interference with the powers conferred on the provincial legislatures by section 92 of the British North America Act, especially as an invasion of the domain of "Property and Civil Rights." The provisions relating to warehouse receipts were claimed to be invalid as being in conflict with the Mercantile Amendment Act, chap. 122, of the Revised Statutes of Ontario on the same subject. The Supreme Court in *The Merchants' Bank v. Smith*, S. C. Can. 512 (1884), upheld these provisions of the Dominion Act. The Privy Council subsequently gave a decision to the same effect in *Tennant v. The Union Bank*, [1894] A. C. 31. In this case the doctrine was clearly laid down, as had been previously done in *Cushing v. Dupuy*, 5 App. Cas. 409 (1880), that inasmuch as section 91 of the B. N. A. Act expressly declares that "notwithstanding anything in this Act," the exclusive authority of the Parliament of Canada shall extend to all matters coming within the enumerated classes, this is a plain indication that the legislation of that Parliament, so long as it strictly relates to these matters, is to be of paramount authority, even though it trenches upon matters assigned to the local legislatures by section 92. They further lay down the doctrine that the legislative authority conferred by the words "Banking, Incorporation of Banks, and the Issue of Paper Money," is not confined to the mere constitution of corporate bodies with the privilege of carrying on the business of bankers; that it extends to the issue of paper currency, which necessarily means the creation of a species of personal property carrying with it rights and privileges which the law of the province does not and cannot attach to it; and that it also comprehends "banking," an expression wide enough to embrace every transaction coming within the legitimate business of a banker. They also say that the power to legislate on the subject of banking conferred upon the Dominion Parliament by section 91 may be fully exercised, even though it may have the effect of modifying civil rights in the province.

The Supreme Court also in *Quirt v. The Queen*, 19 S. C. Can. 510 (1891), upheld the validity of the Dominion Acts which authorized the trustees of the Bank of Upper Canada to carry on the business of the bank, so far as was necessary to wind it up, and which finally transferred to the Dominion Government all the property of the bank and the powers of the trustees. The majority of the Court did so, however, on the ground that it came under the head of "bankruptcy and insolvency," and not under the head of "banking." The doctrine was also laid down that the Dominion Parliament had not the power to deal with either real estate or personal property simply because a bank was interested in the transaction, when it did not come within the scope of the ordinary business of banking.

On the other hand, the right of the Quebec Legislature to pass the Act of 1882, imposing a special tax on banks and other commercial corporations, was claimed to be an interference with the exclusive rights of the Dominion Parliament as to Banking, and the Regulation of Trade and Commerce, and as being direct taxation. The Privy Council, however, in *The Bank of Toronto v. Lambe*, 12 App. Cas. 575 (1887), upheld the validity of the tax. It was held that it was not a fatal objection that the tax was on the whole paid-up capital of the bank, while only a portion of it was employed in the province of Quebec; nor that the legislature might lay on taxes so heavy as to crush a bank out of existence, and so nullify the power of Parliament to create banks.

INTERPRETATION.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "Association" means the Canadian Bankers' Association, incorporated by chapter 93 of

the statutes of 1900 intituled *An Act to incorporate the Canadian Bankers' Association*; R. S. C. c. 29, s. 2 (c).

This Statute will be found in the Appendix. The powers and duties of the Association are set out in sections 117, 118, and 124 of this Act.

(b) “bank” means any bank to which this Act applies;

By section 3 the provisions of the Act apply to the banks named in schedule A, and to banks incorporated after January 1st, 1912. Certain provisions apply to the banks being wound up, and to the Bank of British North America. The sections applicable to the latter are enumerated in section 6.

The Act does not apply to the Post Office Savings Banks, nor to the Government Savings Banks, which are regulated by R. S. C. chap. 30; nor to the Penny Banks established under R. S. C. chap. 31; nor to the two Quebec Savings Banks, governed by The Quebec Savings Banks Act, 1913. These Acts will be found in the Appendix.

(c) “bill of lading” includes all receipts for goods, wares or merchandise, accompanied by an undertaking to transport the same from the place where they were received to some other place, by any mode of carriage, whatever, whether by land or water, or partly by land and partly by water; 53 V., c. 31, s. 2 (c).

The bill of lading is a very ancient document, and by the custom of merchants is negotiable, when made to bearer or order or to assigns. It is in general use among all commercial nations, and is much the same in its form and provisions. It was originally used for transportation of goods by water only. By legislation and usage it has

come to be applied to transportation by land. A "shipping note" given by the G. T. R. Co. was held to be a "bill of lading" within the Ontario Statute, 33 Vict. chap. 19, sec. 3: *Royal Canadian Bank v. G. T. R. Co.*, 23 U. C. C. P. 225 (1873). It is not the contract, for that had been made before the bill of lading was signed and delivered, but it is excellent evidence of the terms of the contract: *Sewell v. Burdick*, 10 App. Cas. at p. 105 (1884). When the goods have been received and the bill of lading signed, it is in general the evidence of the contract, and cannot be varied by parol evidence: *Leduc v. Ward*, 20 Q. B. D. 475 (1888).

The Bills of Lading Act, R. S. C. chap. 118, provides that every consignee named in a bill of lading and every endorser of it, shall be vested with all rights of action and be subject to such liabilities as if the contract had been made with himself. It is not to prejudice the right of stoppage *in transitu*, or of the unpaid vendor in Quebec, or the right to claim freight against the original shipper. Every bill of lading in the hands of a consignee, or endorsee for valuable consideration without notice, shall be conclusive evidence of such shipment as against the master or other person signing the same.

See sections 86, 87, 89 and 90, and the notes thereon.

(d) "Circulation Fund" means the fund heretofore established and continued by the authority of this Act under the name of the Bank Circulation Redemption Fund; R. S. C., c. 29, s. 2 (e).

This fund was established by section 54 of the Act of 1890, which with subsequent amendments has become sections 54 to 59 of the present Act.

(e) "curator" means any person appointed under the authority of this Act by the Canadian Bankers' Association to supervise the

affairs of any bank which has suspended payment in specie or Dominion notes of any of its liabilities as they accrue; R. S. C., c. 29, s. 2 (*d*).

See sections 117 to 124 as to the powers and duties of a curator under the Act.

(*f*) “farmer” includes the owner, occupier, landlord and tenant of a farm; New.

See s. 88, s.-s. 2.

(*g*) “goods, wares and merchandise” includes, in addition to the things usually understood thereby, products of agriculture, products of the forest, products of the quarry and mine, products of the sea, lakes and rivers, petroleum and crude oil, and other articles of commerce; 53 V., c. 31, s. 2 (*c*).

This expression has been frequently the subject matter of judicial decision, especially in connection with its use in the 17th section of the Statute of Frauds. See *Atkinson v. Bell*, 8 B. & C. 277 (1828); also *Lee v. Griffin*, 1 B. & S. 272 (1861). It does not include fixtures: *Hallen v. Runder*, 1 Cr. M. & R. 266 (1834); *Lee v. Gaskell*, 1 Q. B. D. 700 (1876). It does include timber and growing crops, because the clear intention being that they shall be severed, they are taken by a fiction of law as being actually severed: *Smith v. Surman*, 9 B. & C. 561 (1829); *Parker v. Staniland*, 11 East 362 (1809); *Mayfield v. Wadsley*, 3 B. & C. 357 (1824). A fortiori, trees felled, are within the phrase: *Acraman v. Morrice*, 8 C. B. 449 (1849). Choses in action are not within the expression: *Humble v. Mitchell*, 11 A. & E. 205 (1839); nor shares in a company: *Latham v. Barber*, 6 T. R. 67 (1794); *Bowlby v. Bell*, 3 C. B. 284 (1846); *Watson v. Spratley*, 10 Ex. 222 (1854); *Duncuft v. Albrecht*, 12 Sim. 189 (1841); nor are bonds or certificates of stock: *Heseltine v. Siggers*, 1 Ex. 856 (1848);

Freeman v. Appleyard, 32 L. J. Ex. 175 (1862); *Pawle v. Gunn*, 4 Bing. N. C. 445 (1838); *Knight v. Barber*, 16 M. & W. 66 (1846); nor commercial debts: *Rennie v. Quebec Bank*, 3 O. L. R. 541 (1902).

The expression is used in sections 76 and 86 to 89.

(h) "grain" means wheat, oats, barley, rye and flax; New.

See s. 88, s.-s. 2, and s. 89.

(i) "manufacturer" includes manufacturers of logs, timber or lumber, maltsters, distillers, brewers, refiners and producers of petroleum, tanners, curers, packers, canners of meat, pork, fish, fruit or vegetables, and any person who produces by hand, art, process or mechanical means any goods, wares or merchandise; 53 V., c. 31, s. 2 (f); 63-64 V., c. 26, s. 3, s.-s. 2.

(j) "Minister" means the Minister of Finance and Receiver-General; R. S. C., c. 29, s. 2 (b).

The Minister of Finance as head of the Department of Finance of the Dominion Government and as chairman of the treasury Board, established by R. S. C. chap. 23, is assigned very important duties under the Bank Act. See sections 13 to 17, 33, 35, 56, 56A, 60, 61, 62, 64, to 69, 102 105 to 108, 112 to 116, 122, 124, 147 to 152, and 158.

(k) "president" does not include an honorary president;

See s. 24.

(l) "products of agriculture," in addition to the direct products of the soil such as hay, grain,

roots, vegetables, fruits and other crops, includes milk, cream, butter, cheese, honey, poultry (dead), and eggs, hides, skins and wool, and dried, canned and preserved vegetables and fruits; New.

(m) “products of * * the forest” includes bark, logs, spars, railway ties, poles and other timber, shingles, laths, deals, boards, staves and other lumber, and the skins and furs of wild animals; New.

(n) “products of * * * the sea, lakes and rivers” includes, in addition to fish of all kinds, whether fresh, frozen, salted, dried, canned, preserved in oil or otherwise preserved, whales and seals, their oil, skins and bone, oysters, lobsters and other crustaceans, fresh and canned or otherwise preserved; New.

(o) “trustees” means the persons appointed by the Association and by the Minister to receive and hold the central gold reserves, and “trustee” means any one of the trustees, and if one or more of the trustees is a corporation then “trustee” includes each of the officers of such corporation who is responsible for any action taken by the corporation for the purposes of this Act; New.

(p) “warehouse receipt—”

(i) means any receipt given by any person for any goods, wares or merchandise in his actual, visible and continued possession as bailee thereof in good faith and not as of his own property, and

- (ii) includes receipts, given by any person who is the owner or keeper of a harbour, cove, pond, wharf, yard, warehouse, shed, storehouse, or other place for the storage of goods, wares or merchandise, for goods, wares and merchandise delivered to him as bailee, and actually in the place or in one or more of the places owned or kept by him, whether such person is engaged in other business or not, and
- (iii) includes also receipts given by any person in charge of logs or timber in transit from timber limits or other lands to the place of destination of such logs or timber. 53 V., c. 31, s. 2 (*d*) ; 63-64 V., c. 26, s. 3.

The first statutory recognition of warehouse receipts in Canada in connection with banking is found in the Act of 1859, which became section 8 of chapter 54 of the Consolidated Statutes of Canada.

In 1861 warehouse receipts given by warehousemen, millers and wharfingers, for cereal grains, goods, wares, or merchandise, their own property, were placed, as to banks, on the same footing as those given for the property of others. See *Molsons Bank v. Lanaud*, 2 Dorion, 182 (1881).

In *Williamson v. Rhind*, 22 L. C. J. 166 (1877), it was held that a warehouse receipt given by a warehouseman for goods not in his possession was null and void. Also in *Milloy v. Kerr*, 8 S. C. Can. 474 (1880).

The first definition of a warehouse receipt introduced into a Canadian Bank Act was in that of 1880, apparently with a view to overcome the decisions of the Ontario Courts to the effect that a warehouse receipt could be given only by one who followed the business of a ware-

houseman. For a discussion of this definition see *Re Monteith*, 10 O. R. 529 (1885).

In *La Banque Nationale v. Royer*, Q. R. 20 K. B. 341 (1910), it was held that where a firm of wholesale grocers rented a portion of their premises to a clerk at a nominal rental, and they set apart certain goods which he held in the leased premises, a warehouse receipt given by him to the firm, and which it gave to a bank as collateral, was valid in the hands of the bank and gave it the rights mentioned in section 86 of the Act.

By section 54 of R. S. C. 1886, chap. 120, as amended by the Act of 1888, 51 Vict. chap. 27, receipts given by certain manufacturers, dealers, etc., for goods their own property were recognized as warehouse receipts. The Bank Act of 1890 did not include such an instrument in its definition of a warehouse receipt, but under section 74 called it simply a "security." It is dealt with in section 88 of the present Act.

In *Tennant v. Union Bank*, 19 Ont. A. R. 1 (1892), it was held that a warehouse receipt for logs lying in certain lakes on the way from the woods to the mill was not valid as not being in a place kept by the signers of the receipt. This had previously been held in *Ross v. Molsons Bank*, 2 Dorion, 82 (1881). The last clause of the above definition was enacted by section 3 of the Act of 1900 to render valid such receipts.

In a warehouse receipt the goods should be described with reasonable certainty, and where practicable, by distinguishing marks. Ordinarily it does not cover substituted or subsequently received goods: *Llado v. Morgan*, 32 U. C. C. P. 517 (1874). Where, however, as in the grain trade, there is a usage of trade that different lots of the same quality are stored together and mixed, the receipt is satisfied by the delivery of the specified quantity and quality: *Coffey v. Quebec Bank*, 20 U. C. C. P. 555 (1870); *Bank of Hamilton v. Noye Manufacturing Co.*, 9 O. R. 638

(1885). So also in the case of wheat to be made into flour; *Wilmot v. Maitland*, 3 Grant, 107 (1851); *Mason v. G. W. R. Co.*, 31 U. C. Q. B. 73 (1871); *Bank of Hamilton v. Noye Manufacturing Co.*, *supra*.

In England warehouse receipts were not fully recognized as negotiable instruments, like bills of lading and other documents of title, until the Factors Act, 1877.

They are negotiable only in the lower or secondary sense of this term in that they may be transferred by endorsement and delivery, or by delivery alone, and may thereby vest in the transferee the rights of the transferer. They are not negotiable in the higher sense, like bills of exchange and promissory notes, which by endorsement or delivery before maturity, may vest in the *bona fide* holder for value not only the rights of the transferrer, but the right to claim the full amount for which the instrument is drawn. If the receipt is in favor of a certain person or his order it must be endorsed by him; if it is drawn in favor of the bearer or endorsed in blank it is transferable by delivery alone.

A warehouse receipt does not require to be in any particular form, but the receipt itself and the facts and circumstances attending its issue should conform to the definition in section 2 (*p*). (*i*); and the document itself should as fully as possible be brought within one or other of the clauses (*ii*) and (*iii*), giving the name of the owner, a sufficient description of the goods, the place or places where the property is kept, or in the case of logs or timber in transit, the two extreme places.

See sections 86, 87, 89 and 90, and the notes thereon, for a discussion of these receipts as affected by the provisions of the Bank Act.

2. Public Notice.—Where by this Act any public notice is required to be given the notice shall, unless otherwise specified, be given by advertisement—

(a) in one or more newspapers published at the place where the chief office of the bank is situate; and,

(b) in *The Canada Gazette*.

3. When by this Act a notice is required to be published in a newspaper for four weeks or any longer period, publication each week in a weekly newspaper, or once a week during the period in a newspaper published more frequently, shall be a sufficient publication for the purposes of this Act.

4. When by this Act notice of any call is required to be given to the shareholders the notice shall, unless otherwise specified, be sufficiently given by mailing the notice in the post office, registered and post paid, to the last known post office address of the respective shareholders as shown by the records of the bank, at least thirty days prior to the day on which the call is payable. 53 V., c. 31, ss. 2, 54 and 102; 63-64 V., c. 26, ss. 3 and 24; 4-5 E. VII., c. 4, s. 4. Am.

APPLICATION.

General.

3. The provisions of this Act apply to the several banks enumerated in Schedule A to this Act, and to every bank incorporated after the first day of January, one thousand nine hundred and twelve, whether this Act is specially mentioned in its Act of incorporation or not, but

not to any other bank, except as hereinafter specially provided. 53 V., c. 31, s. 3. Am.

Schedule A to the Act of 1890 contained the names of thirty-six banks; Schedule A to the Act of 1900 contained the names of thirty-four. Of those in the former list three had suspended payment and were being wound up, viz., The Commercial Bank of Manitoba, which suspended July 3rd, 1893; La Banque du Peuple, July 16th, 1895; and La Banque Ville Marie, July 25th, 1899. The Merchants' Bank of Prince Edward Island was added to the list on the 1st of March, 1892. La Banque Jacques Cartier, on July 3rd, 1900, became La Banque Provinciale du Canada, and the Merchants' Bank of Halifax, on January 2nd, 1901, became the Royal Bank of Canada.

Schedule A to R. S. C. 1906, chap. 29, contained the names of thirty-four banks. Of those in the list of 1900, the Halifax Banking Company, and the Merchants' Bank of Prince Edward Island, had been merged in the Canadian Bank of Commerce; the Exchange Bank of Yarmouth, the People's Bank of Halifax and the People's Bank of New Brunswick in the Bank of Montreal; the Commercial Bank of Windsor in the Union Bank of Halifax; and the Summerside Bank in the Bank of New Brunswick. The Bank of Yarmouth, Nova Scotia, suspended payment on the 6th of March, 1905.

The following new banks appeared in the list of 1906: The Sovereign Bank of Canada; the Metropolitan Bank; the Crown Bank of Canada; the Home Bank of Canada; the Northern Bank; the Sterling Bank of Canada; and the United Empire Bank of Canada. It will thus be seen that seven banks disappeared from the list of 1900, and were replaced by seven new banks in the list of 1906.

The assets and business of the Ontario Bank were taken over by the Bank of Montreal in October, 1906, and the People's Bank of New Brunswick merged in the same

in April, 1907. The Farmers Bank of Canada, incorporated in 1904, chap. 77, began business in January, 1907; but suspended payment in December, 1910, and is being wound up under the Act.

On the 17th of January, 1908, the 86 offices of the Sovereign Bank were taken over by, and distributed among twelve of the leading banks, and the business carried on by them transferred, without even a rumour of the impending change having appeared in the public press. The capital had been reduced in 1907 from four to three million dollars, and the directors came to the conclusion that the bank could not be carried on profitably. The bank, however, was not brought under the Winding-up Act. It still appears in Schedule A for winding-up purposes, although it has not done business for nearly six years.

In February, 1908, the shareholders of the Northern Bank and the Crown Bank voted in favor of an amalgamation of these two institutions under the name of the Northern Crown Bank, and the agreement was confirmed by the statute chapter 137 of that year, the merger taking effect July 2nd, 1908.

The Western Bank of Canada was merged in the Standard Bank of Canada in 1908.

The Banque de St. Jean went into liquidation April 28th, 1908, and the Banque de St. Hyacinthe on the 25th of July, 1908.

The Bank of Vancouver was incorporated in 1908 by chapter 166, and began business in July, 1910.

The Weyburn Security Bank was incorporated in 1910, and began business in January, 1911.

The St. Stephen's Bank suspended payment March 8th, 1910, and its assets were taken over by the Bank of British North America.

The United Empire Bank of Canada was merged in the Union Bank of Canada in February, 1911.

The Eastern Townships Bank was merged in the Canadian Bank of Commerce in March, 1912.

The Traders Bank of Canada was merged in the Royal Bank of Canada in September, 1912.

The Bank of New Brunswick was merged in the Bank of Nova Scotia in February, 1913.

The Banque Internationale du Canada was incorporated in 1911, by chapter 37. It was merged in the Home Bank of Canada in April, 1913.

As above stated, the number of banks in Canada remained practically the same from 1890 to 1906, the figures being thirty-six and thirty-four respectively. It is remarkable that since 1906 the number has rapidly diminished, so that although four new banks were started, of which two are still carrying on business, there are now only twenty-three, the others having either failed or having been merged in other banks.

While the number of banks has decreased, the volume of banking business has increased enormously. On December 31st, 1890, the paid-up capital of the banks was \$60,057,235; on December 31st, 1900, \$67,087,111; and on August 31st, 1913, \$116,818,251; their combined rest or reserve funds on these dates respectively, \$21,940,369, \$34,501,349, and \$109,194,211; and their deposits respectively, \$139,593,525, \$464,383,538, and \$1,074,358,377.

The Act does not apply to the Post Office Savings Banks, nor to the Government Savings Bank, which are governed by R. S. C. chap. 30; nor to Penny Banks established under R. S. C. chap. 31; nor to the Quebec Savings Banks regulated by 3-4 Geo. V. chap. 42. These statutes will be found in the Appendix.

The provisions of the Bank Act do not apply to a foreign bank: *National Bank of Chicago v. Corcoran*, 6 O. R. 531 (1884).

4. Charters Continued.—The charters or Acts of incorporation, and any Acts in amendment thereof, of the several banks enumerated in Schedule A to this Act are continued in force until the first day of July, one thousand nine hundred and twenty-three, so far as regards, as to each of such banks,—

- (a) the incorporation and corporate name;
- (b) the amount of the authorized capital stock, if the same has not been increased or decreased, but if increased or decreased then as increased or decreased before the passing of this Act;
- (c) the amount of each share of such stock; and
- (d) the chief office;

subject to the right of each of such banks to increase or to reduce its authorized capital stock in the manner hereinafter provided.

- 2. As to all other particulars this Act shall form and be the charter of each of the said banks until the first day of July, one thousand nine hundred and twenty-three.
- 3. Nothing in this section shall be deemed to continue in force any charter or Act of incorporation, if, or in so far as it is, under the terms thereof, or under the terms of this Act or of any other Act passed or to be passed, forfeited or rendered void by reason of the non-performance of the conditions of such charter or Act of incorporation or by reason of insolvency, or for any other reason. 63-64 V., c. 26, s. 6. Am.

The question whether the charter of a bank might be annulled by a writ of *scire facias* in the Exchequer Court at the instance of the Minister of Justice was considered by the latter in a matter of *Sarazin v. Bank of St. Hyacinthe*, 28 L. C. J. 270 (1881). The application was refused on the merits, and doubts expressed as to the regularity of such a proceeding.

In *Lapierre v. Banque de St. Jean*, 17 R. L. N. S. 428 (1910), it was held that the Minister of Justice alone could demand the nullity of a bank charter on the ground of its having been obtained by fraud, and this judgment was affirmed in appeal. Leave to appeal to the Privy Council was refused on the ground that the amount in dispute was below the statutory requirement, and that there was no appeal to the Privy Council in winding-up matters; 12 Que. Pr. R. 152 (1910).

By the Act of 1900 the charters of all the banks were extended to the first of July, 1911, and those granted since were to expire at the same time. By chapter 4 of 1911 they were continued to the first of July, 1912; and by chapter 5 of 1912 to the first of July, 1913.

Banks in course of winding-up.

5. The provisions of this Act shall continue to apply to the banks named in the Schedule to chapter 5 of the statutes of 1912, intituled *The Bank Charters Continuation Act, 1912*, and not named in Schedule A to this Act, but only in so far as may be necessary to wind up the business of the said banks respectively; and the charters or Acts of incorporation of the said banks, and any Acts in amendment thereof, or any Acts in relation to the said banks now in force, shall respectively continue

in force for the purposes of winding-up, and for such purposes only. 63-64 V., c. 26, s. 5. Am.

A comparison of the two schedules shows that the following are the banks named in the schedule of 1912, and not named in Schedule A to the present Act: The Bank of New Brunswick, the St. Stephen's Bank, the Eastern Townships Bank, the Union Bank of Halifax, the Ontario Bank, the People's Bank of New Brunswick, La Banque de St. Jean, La Banque de St. Hyacinthe, the Western Bank of Canada, the Traders Bank of Canada, the United Empire Bank of Canada, the Farmers Bank of Canada, and Banque Internationale du Canada.

The Bank of British North America.

6. The sections of this Act which apply to the Bank of British North America are sections—
1; 2; 6; 7; 39; 45; 54 to 61, both inclusive, 63 to 124, both inclusive; 130 to 160, both inclusive.
2. The other sections of this Act do not apply to the Bank of British North America. 53 V., c. 31, s. 6; 63-64 V., c. 26, s. 7. Am.

A reference to the sections above mentioned will show that the provisions of the Bank Act which are applicable to the Bank of British North America are those relating to that portion of its business transacted in Canada, and which are specially intended for the protection of the public. The sections which do not apply to it are chiefly those relating to the operations at the head office, such as the incorporation, organization, shares, calls, double liability and insolvency. As to such matters it is regulated by the terms of its Imperial Charter.

The bank began business on the 28th of May, 1836, as a banking partnership. It was granted a Royal Charter on the 23rd of April, 1840. Supplemental charters

were granted October 5th, 1852, and May 27th, 1884. Royal Warrants have been granted from time to time extending its right to do business, corresponding to the extensions granted to the Canadian banks by the Canadian Bank Acts.

7. For the purposes of the several sections of this Act made applicable to the Bank of British North America the chief office of the Bank of British North America shall be the office of the bank at Montreal in the province of Quebec. 53 V., c. 31, s. 7.

INCORPORATION AND ORGANIZATION OF BANKS.

8. The capital stock of every bank hereafter incorporated, the name of the bank, the place where its chief office is to be situated, and the names of the provisional directors, shall be declared in the Act of incorporation of every such bank respectively. 53 V., c. 31, s. 9.
9. An Act of incorporation of a bank in the form set forth in Schedule B to this Act shall be construed to confer upon the bank thereby incorporated all the powers, privileges and immunities, and to subject it to all the liabilities and provisions set forth in this Act. 53 V., c. 31, s. 9.

The skeleton form in schedule B contains blanks for the four items named in section 8, and also states that the Act of incorporation shall remain in force until July 1st, 1923, subject to the provisions of section 16, which provides that within a year a bank must obtain a certificate to do business.

10. The capital stock of any bank hereafter incorporated shall be not less than five hundred thousand dollars, and shall be divided into shares of one hundred dollars each. 53 V., c. 31, s. 10.

These provisions as to minimum capital stock and the amount of shares of new banks were first enacted in 1890. In 1900 there were six banks doing business with a subscribed capital of less than \$500,000 each. They have all ceased to exist. The Exchange Bank of Yarmouth and the People's Bank of New Brunswick were merged in the Bank of Montreal; Summerside Bank in the Bank of New Brunswick; St. Stephen's Bank in the Bank of British North America; and the Merchants' Bank of Prince Edward Island in the Canadian Bank of Commerce; while the Bank of Yarmouth suspended payment, and was wound up under the Act.

11. The number of provisional directors shall be not less than five.
2. The provisional directors shall hold office until directors are elected by the subscribers to the stock, as hereinafter provided. 53 V., c. 31, s. 11; 4-5 E. VII., c. 4, s. 1.

The Act of 1890 provided that the number of provisional directors should be not less than five nor more than ten. The last four words were struck out in 1905.

The election of directors by the subscribers is provided for in section 13.

12. **Stock Books and Subscriptions.**—For the purpose of organizing the bank, the provisional directors may, after giving ten days public notice thereof, cause stock books to be opened, in which shall be recorded the subscriptions of

such persons as desire to become shareholders in the bank.

2. The stock books shall be opened at the place where the chief office of the bank is to be situate, and elsewhere in the discretion of the provisional directors.
3. Each subscriber shall, at the time of subscription, give his post office address, and description, and these particulars shall appear in the stock books in connection with the name of the subscriber and the number of shares subscribed for.
4. There shall be printed in small pica type, or type of larger size, on each page in the stock books upon which subscriptions are recorded, and on every document constituting or authorizing a subscription, on a part of the page and document, respectively, which may be readily seen by the person recording the subscription, or by the person signing the document, a copy of section 125 of this Act.
5. The stock books may be kept open for such time as the provisional directors deem necessary.
6. In case of the non-payment of any instalment or other sum payable by a subscriber on account of his subscription, the provisional directors may, in the corporate name of the bank, sue for, recover, collect and get in any such instalment or sum. 53 V., c. 31, s. 12. Am.

The first sub-section of this section has been amended by prescribing ten days as the minimum length of the public notice to be given. This would require nine insertions in a daily newspaper or two insertions in a weekly paper, published at the place where the chief office of the bank is situate, and two insertions in the Canada Gazette: sec. 2, sub-sec. 2.

Sub-sections 3, 4 and 6 are also new. The first of these is to secure precise information as to the address of the subscriber and the number of his shares. The second is to bring before him notice of the double liability, while the last remedies a defect pointed out in the previous edition of this work.

This and the succeeding section contain all the provisions in the Act as to the powers and duties of provisional directors. While no special rules are laid down for their guidance, they should follow the approved and well recognized methods adapted to such bodies. All such steps as are reasonably taken by them in good faith for accomplishing the duty entrusted to them, viz., organizing the bank, would no doubt be upheld.

One of the first steps would naturally be to meet and organize by the election of a provisional president or chairman, and the appointment of such other officers as are necessary for carrying out the work indicated in this section.

Although the Act does not require that the business of the provisional directors should be done at meetings, and does not even speak of such meetings, the business specified should, as a rule, be done at regularly called and organized meetings: *D'Arcy v. Tamar, etc., Ry. Co.*, L. R. 2 Ex. 158 (1867); *Re Haycraft Gold R. and M. Co.*, [1900] 2 Ch. 230. Where the subscribers who were the provisional directors, and who had the right to determine the number of directors, and the names of the first directors, did so by a writing signed by all of them, without holding a

meeting, their action was upheld on the ground that the Act did not require them to act jointly or as a board: *In re Great Northern S. and C. Works, Ex parte Kennedy*, 44 Ch. D. 472 (1890).

A majority of the provisional directors would form a quorum. *Howbeach Coal Co. v. Teague*, 5 H. & N. 151 (1860); *Re London and Southern Cos. F. L. Co.*, 31 Ch. D. 223 (1885); R. S. C. chap. 1, sec. 31 (c).

The ordinary form of the heading of these stock books is in the nature of an application for shares. Like any other offer it requires an acceptance to make a binding contract. It may be withdrawn before it is accepted: *Wallace's Case*, [1900] 2 Ch. 271. It has been held that a verbal revocation is sufficient if made to a person who has authority to receive it: *Truman's Case*, [1894] 3 Ch. 272; *Mallory's Case*, 3 O. L. R. 552 (1902).

On account of the Act containing so little upon the subject of such applications or subscriptions for stock, and nothing upon the allotment by the provisional directors, or the collection of the \$250,000 mentioned in the next section, it is desirable to embody fully in the heading of the subscription books the terms of payment, etc., to which the subscriber agrees; also that the applicant will take a specified number of shares or such smaller number as may be allotted to him by the provisional directors on the terms mentioned in the stock books or prospectus.

Sub-section 8 by implication gives the provisional directors the right to embody in the subscription books provisions that the subscriptions shall be payable in such instalments as may be declared in these books and in the prospectus. They might also make an agreement with any subscriber that he should pay certain amounts at stated times, and under the Act of incorporation, and this sub-section, they could legally collect such sums: R. S. C., c. 1, s. 30. They are not authorized to make calls, so that it must be a matter of contract.

As pointed out in *Re Monarch Bank*, 22 O. L. R. 516 (1910), provisional directors of a bank are given even less power than is given in the case of companies, and the scheme of the Act is that their powers "are to be strictly limited to those specifically granted for the purpose of getting the bank started as a business concern."

In *Galloway's Case*, 12 O. L. R. 107 (1906), it was held that under the Ontario Companies Act, the directors had no authority to delegate to a subordinate officer authority to allot stock on such applications as might be made. See to same effect *Re Leeds Banking Co.*, L. R. 1 Ch. 561 (1866).

To make a binding contract there must be not only an allotment, but a communication of it to the subscriber: *Pellatt's Case*, L. R. 2 Ch. 527 (1867); *Gunn's Case*, L. R. 3 Ch. 40 (1867).

Unless there is something pointing to the contrary a notice sent by post is sufficient even though it does not reach the subscriber, provided the bank be not in fault: *Household Fire Ins. Co. v. Grant*, 4 Ex. D. 216 (1879).

The contract for shares is complete if it be an offer on the part of the bank and an acceptance by the subscriber; or if it be an undertaking to take shares made under seal or for valuable consideration, it cannot be revoked. *Nelson Coke Co. v. Pellatt*, 4 O. L. R. 481 (1902); *Calderwood's Case*, 10 O. L. R. 705 (1905).

Subscriptions for stock may be invalid and set aside for the same reasons as other contracts. Where a father subscribed for stock in the name of his infant daughter, and nine months after coming of age she took steps to have her name removed from the list of contributories, it was held that she was entitled to this relief. *Re Central Bank & Hogg*, 19 O. R. 7 (1890).

Notice of allotment may be waived by the subscriber acting as a shareholder or director, or in a manner

consistent only with an acknowledgment of an acceptance of his application: *Levita's Case*, L. R. 3 Ch. 36 (1867).

No power is given to fill any vacancies. So long as the number is not reduced below the minimum of five the remaining members may act. As the bank by section 16 must be organized within a year or its charter lapses, vacancies may not occur. In some cases where the charters have been extended, power has been expressly given to fill vacancies: see 6 Edw. VII., chap. 127, sec. 3. In any event it is prudent to have more than five so as to provide for possible vacancies through death or resignation.

The provisional directors should make an allotment of stock to the subscribers and give them notice of it: *Nasmith v. Manning*, 5 S. C. Can. 417 (1881); *In re Scottish Petroleum Co.*, 23 Ch. D. 413 (1883). This would be indispensable in case the subscription was in the form of an application, or the stock was over-subscribed; but should be done in any case in order to bind the subscribers: *Lake Superior Nav. Co. v. Morrison*, 22 U. C. C. P. at p. 220 (1872); *European and N. A. Ry. Co. v. McLeod*, 16 N. B. 3 (1875); *Common v. Matthews*, Q. R. 8 Q. B. 138 (1898).

Parol evidence is inadmissible to contradict the unconditional terms of the subscription: *Hamilton v. Holmes*, 33 N. S. 102 (1900).

The provisional directors are not authorised to pay a commission to agents for obtaining subscriptions to the stock of the bank, and are personally liable for such payments on the winding up of a bank that did not organize: *Re Monarch Bank*, 22 O. L. R. 576 (1910).

13. First meeting of subscribers.—Whenever a sum not less than five hundred thousand dollars of the capital stock of the bank has been *bona fide* subscribed, and payments in money

on account thereof have been made by the subscribers, the total of such payments making a sum not less than two hundred and fifty thousand dollars, and as soon thereafter as the provisional directors have paid thereout to the Minister the sum of two hundred and fifty thousand dollars, the provisional directors may, by public notice published for at least four weeks, call a meeting of the subscribers in the said stock, to be held in the place named in the Act of incorporation as the chief office of the bank, at such time and at such place as is set forth in the said notice.

2. For the purposes of the foregoing sub-section no subscription shall be deemed to have been made *bona fide* or be complete unless and until payment in money equal to at least ten per cent of the amount subscribed has been made on account of such subscription by the subscriber, and such payment, with the date thereof, shall be entered on the stock books opposite to such subscription. New.
3. The subscribers shall, at such meeting,—
 - (a) determine the day upon which the annual general meeting of the bank is to be held;
 - (b) elect such number of directors, duly qualified under this Act, not less than five, as they think necessary; and,
 - (c) provide for the method of filling vacancies in the board of directors until the annual general meeting.

4. Such directors shall hold office until the annual general meeting next succeeding their election.
5. Upon the election of directors as aforesaid the functions of the provisional directors shall cease. 53 V., c. 31, s. 13; 4-5 Edw. VII., c. 4, s. 2. Am.

The second sub-section is new, and the first sub-section was made more stringent at the last session by requiring payments to be made in money and not in promissory notes, as had been done in some instances. Formerly subscriptions might be counted on which nothing had been paid; now they cannot be counted at all, unless at least ten per cent has been paid.

There are still in this section some anomalies and defects that were pointed out in the previous edition of this work. Only a public notice of the meeting is required, that is, a notice in a local newspaper, and in the Canada Gazette. No notice need be sent by mail, as is required for the annual meeting by section 21, or for a special meeting by section 31. The Act is silent as to whether in the voting it is subscribers or shares or money payments that are to be counted; also as to whether subscribers may vote by proxy, as in the case of shareholders at meetings subsequent to the certificate to commence business, and of subscribers where a certificate has not been issued. See sections 32 and 16. Is the voting at this first meeting to be open, or by ballot as at the annual and special meetings of shareholders? It would have been better if these and some other matters had been settled.

There is no common law right to vote by proxy: *Harben v. Phillips*, 23 Ch. D. at pp. 22 and 35 (1883). At common law, votes at all meetings are taken by show of hands: *Re Horbury Bridge, etc., Co.*, 11 Ch. D. at p. 115 (1879). If this last rule is to prevail a subscriber who has

taken a single share and has paid ten dollars thereon, counts for as much as the largest subscriber who may have paid up in full.

There being no provision in this Act or in the Act incorporating a bank (Schedule A), as to how votes are to be taken at this meeting, the result is to "vest in a majority of the members of the corporation the power to bind the others by their acts": *Interpretation Act*, R. S. C., c. 1, s. 30 (b).

It would appear as if it was intended that the subscribers should be at liberty to conduct the meeting, and transact the business mentioned in the section in such manner as they see fit, so long as they act reasonably. Nothing is said about scrutineers, but it has been held that a meeting may appoint scrutineers to take the vote and report to the chairman if it sees fit: *Wandsworth Co. v. Wright*, 22 L. T. N. S. 404 (1870).

There is no suggestion in the Act that any particular quorum of subscribers or shareholders either as to individuals or as to the number of shares held by them, is required for this first meeting or any subsequent general meeting.

The common law rule that in the absence of any other provision as to a quorum a majority of the whole number is necessary to form a quorum applies only to those bodies where the number is fixed and definite. Where the body, as here, consists of an indefinite number, the rule is that where the proper notice is given and the meeting is regularly assembled, a majority of those who assemble may transact the business, unless the number can be said to be unreasonably small for the business to be done: 1 *Lindley on Companies* (6th ed.), p. 208; 1 *Thompson on Corporations*, sec. 725; *Craig v. First Presbyterian Church*, 88 Pa. State 42 (1878).

In the case of banks the subscribers and shareholders are usually so numerous and widespread that it would be

practically impossible to obtain the presence of a majority at a meeting.

It takes at least two persons to constitute a meeting: *Sharp v. Dawes*, 2 Q. B. D. 26 (1876); *In re Sanitary Carbon Co.*, W. N. 1877, p. 223.

This meeting might before electing directors adjourn to a subsequent day, as the adjourned meeting would be considered a continuation of the original meeting.

It is only the date of the first annual general meeting that is fixed at this meeting. The date of subsequent annual meetings is fixed by by-laws passed by the shareholders: sec. 18. The directors elected at this first meeting must have the qualification prescribed by section 20.

14. Bank commencing business.—The bank shall not issue notes or commence the business of banking until it has obtained from the Treasury Board a certificate permitting it to do so.

2. No application for such certificate shall be made until directors have been elected by the subscribers to the stock in the manner hereinbefore required. 53 V., c. 31, s. 14.

The preliminary statutory requirements for the organization of a bank and commencing business are the following, and are to be taken in the following order: (1) obtaining Act of incorporation; (2) subscription of at least \$500,000 of stock; (3) payment in on account of stock of \$250,000; (4) payment over to the Minister of Finance of \$250,000; (5) holding meeting of subscribers and electing directors, etc.; (6) application for certificate to do business; (7) issue of such certificate by Treasury Board within a year from the passing of the Act of incorporation or within the time fixed by a subsequent Act.

Any person offending against sub-section 1 of this section is by section 132, guilty of an offence against the Act, and by section 157 liable to a fine not exceeding \$1,000, or to imprisonment for five years or to both.

15. Conditions of obtaining certificate.—At the time of the application for the certificate, there shall be submitted to the Treasury Board a sworn statement setting forth the several sums of money paid in connection with the incorporation and organization of the bank, and such statement shall, in addition, include a list of all the unpaid liabilities, if any, in connection with or arising out of such incorporation and organization. New.

2. Prior to the time at which the certificate is given no payments on account of incorporation and organization expenses shall be made out of moneys paid in by subscribers except reasonable sums for the payment of clerical assistance, legal services, office rental, advertising, stationery, postage and expenses of travel, if any. New.

3. No certificate shall be given by the Treasury Board until it has been shown to the satisfaction of the Board, by affidavit or otherwise, that all the requirements of this Act and of the special Act of incorporation of the bank, as to the subscriptions to the capital stock, the payment of money by subscribers on account of their subscriptions, the payment required to be made to the Minister, the election of directors, deposit for security of note issue, or other preliminaries, have been complied with,

and that the sum so paid is then held by the Minister, and unless it appears to the Board that the expenses of incorporation and organization are reasonable. 53 V., c. 31, s. 15, s.-s. 1. Am.

4. No such certificate shall be given except within one year from the passing of the Act of incorporation of the bank applying for the said certificate. 53 V., c. 31, s. 15, s.-s. 2. Am.

This section was put into its present shape at the recent revision largely on account of the irregularities that occurred in connection with the organization of the Farmers Bank and the attempted organization of the Monarch Bank. Sub-sections 1 and 2 are entirely new; the requirements of evidence as to the subscriptions and payments of subscribers in sub-section 3 are also new, as well as the provision that the Treasury Board should find the preliminary expenses to be reasonable.

Since sub-section 4 was first enacted in 1890, Parliament has in a number of cases extended the period for organization for another year, and even granted a second extension.

The subject of the expenses of incorporation and organization has been further dealt with in sections 16 and 131A.

- 16. When certificate does not issue.**—If the bank does not obtain a certificate from the Treasury Board within one year from the time of the passing of its Act of incorporation, all the rights, powers and privileges conferred on the bank by its Act of incorporation shall thereupon cease and determine, and be of no force or effect whatever. 53 V., c. 31, s. 16.

2. If stock books have been opened and subscriptions in whole or in part paid, but no certificate from the Treasury Board obtained within the time limited by the preceding subsection, no part of the money so paid, or accrued interest thereon, shall be disbursed for commissions, salaries, charges for services or for other purposes, except a reasonable amount for payment of clerical assistance, legal services, office rental, advertising, stationery, postage and expenses of travel, if any, unless it is so provided by resolution of the subscribers at a meeting convened after notice, at which the greater part of the money so paid is represented by subscribers or by proxies of subscribers; and each subscriber shall be entitled at such a meeting to one vote for each ten dollars paid on account of his subscription. New.
3. If the amount allowed by such resolution for commissions, salaries or charges for services be deemed insufficient by the provisional directors, or directors elected under section 13 of this Act, as the case may be, or if no resolution for such purpose be passed after a meeting has been duly called, then the provisional directors, or directors elected as aforesaid, may apply to a judge of any superior or county court having jurisdiction where the chief office of the bank is fixed by its Act of incorporation, to settle and determine all charges and the reasonableness of the amount of the disbursements already made to which such money and interest, if any, shall be subject, before

distribution of the balance to the subscribers.
New.

4. Notice of the meeting and notice of the application respectively referred to in the next preceding subsections shall be given by mailing the notice in the post office, registered and post paid, at least twenty-one days prior to the date fixed for such meeting or the hearing of such application, to the several subscribers to their respective post office addresses as contained in the stock books; and each of such notices shall contain a statement, in summary form, of the several amounts for commissions, salaries, charges for services and disbursements which it is proposed shall be provided by resolution for payment, or settled and determined by a judge, as the case may be. New.
5. Votes of subscribers may be given at such meeting by proxy, the holder of such proxy to be a subscriber, and subscribers may be heard either in person or by counsel on such application. New.
6. In order that the sums paid and payable under the provisions of this section may be equitably borne by the subscribers, the provisional directors or the directors, as the case may be, shall, after the amount of such sums is ascertained as herein provided, fix the proportionate part thereof chargeable to each subscriber at the ratio of the number of shares, in respect of which he is a subscriber to the total number of shares *bona fide* subscribed. New.

7. The respective amounts so fixed shall, before return of the sums paid in to the subscriber, be deducted therefrom, and if the respective sums paid in are not as much as the amounts so fixed, then the excess in each case shall be payable forthwith by the subscriber to the provisional directors or the directors, as the case may be. New.
8. The total of the amounts in excess mentioned in the next preceding subsection which the provisional directors or the directors are unable to get in or collect in what seems to them a reasonable time shall, with any legal costs incurred, be deducted by them from the sums then remaining in their hands to the credit of the several subscribers in the ratio hereinbefore mentioned, the shares in respect of which no such collections have been made being eliminated from the basis of calculation. New.
9. The provisional directors or directors, after payment by them of the sums payable under this section, shall return to the subscribers, with any interim interest accretions, the respective balances of the moneys paid in by the subscribers. 53 V., c. 31, s. 16. Am.

Section 15 treats of the evidence to be submitted to the Treasury Board before it grants a certificate to a bank to commence business. Section 16 treats of the case of a bank which has obtained an Act of incorporation, but which has not obtained a certificate, either because it has failed to apply for one, or has not furnished the evidence required by section 15 to the satisfaction of the Treasury Board.

Sub-sections 2 to 9 inclusive of this section are entirely new. They lay down precise rules as to the powers and duties of the provisional directors, and also of the directors elected at the first meeting of subscribers if it has been held; and settle a number of questions that were raised in the case of *Re Monarch Bank*, 22 Q. L. R. 516 (1910), and in the notes to section 13 of the Act in the previous edition of this work.

17. Deposit, how disposed of.—Upon the issue of the certificate in manner hereinbefore provided, the Minister shall forthwith pay to the bank the amount of money so deposited with him as aforesaid, without interest, after deducting therefrom the sum of five thousand dollars required to be deposited under the provisions of this Act for the securing of the notes issued by the bank.

The Minister retains the above sum of \$5,000 until the annual adjustment of the Bank Circulation Redemption Fund in the following year: sec. 64, s.-s. 2.

2. In case no certificate is issued by the Treasury Board within the time limited for the issue thereof, the amount so deposited shall be returned to the bank for distribution in the manner provided by this Act.
3. In no case shall the Minister be under any obligation to see to the proper application in any way of the amount so returned. 53 V., c. 31, s. 17. Am.

Sub-section 2 formerly provided that the deposit should be returned to the person who had made it. Section 13 now provides that the deposit shall be made by the provisional directors who represent the bank and it will be returned to the directors elected at the meeting

of subscribers: see. 13. Section 16 provides that if the certificate is not obtained within the year all the rights, powers and privileges conferred on the bank shall cease and be of no force or effect. In that event it is the duty of the directors elected at the first meeting to wind up the bank and distribute the money in accordance with the provisions of section 16.

INTERNAL REGULATIONS.

18. Regulation by by-law.—The shareholders of the bank may, at any annual general meeting or at any special general meeting duly called for the purpose, regulate, by by-law, the following matters incident to the management and administration of the affairs of the bank, that is to say:—

- (a) The day upon which the annual general meeting of the shareholders for the election of directors shall be held;
- (b) The record to be kept of proxies, and the time, not exceeding twenty days, within which proxies must be produced and recorded prior to a meeting in order to entitle the holder to vote thereon;
- (c) The number of the directors, which shall be not less than five, and the quorum thereof, which shall be not less than three;
- (d) Subject to the provisions hereinafter contained, the qualifications of directors;
- (e) The method of filling vacancies in the board of directors, whenever the same occur during each year;

- (f) The time and proceedings for the election of directors in case of a failure of any election on the day appointed for it;
- (g) The remuneration of the president, vice-president and other directors; and,
- (h) The amount of discounts or loans which may be made to directors, either jointly or severally, or to any one firm or person, or to any shareholder, or to corporations. 53 V., c. 31, s. 18, s.-s. 1; 4-5 E. VII., c. 4, s. 3. Am.

The words "at any annual general meeting or at any special general meeting duly called for the purpose" are new. In clause (b) "twenty" has been substituted for "thirty."

By-laws.—The shareholders may pass general by-laws or regulations for the internal government of the bank on the subjects mentioned in this section. The details of the management and the carrying out of these regulations are entrusted to the directors under section 29.

These by-laws may be passed at the annual general meeting or at a special meeting called for the purpose; when the shareholders meet they should organize by electing one of their number as chairman, and by appointing a secretary who need not be a shareholder. Proper minutes of all these meetings should be taken and recorded.

A simple majority of the shares present and voting is sufficient. By-laws should be attested by the President or by the officer presiding at the meeting at which they were passed, and by the seal of the bank. If the meeting is not unanimous, the voting on a by-law must be by ballot, and in accordance with the other provisions of section 32.

Several of the matters named in this section which may now be regulated by by-law, were formerly embodied in the charters of the respective banks.

No particular formality is required for by-laws; but as they are usually intended for a permanency, and not for a temporary use, they should be drawn up with care in statutory form. A by-law should be consistent with the statute under which it is framed and with the general law. It should also be certain and free from ambiguity, general in its application, reasonable and positive in its terms.

The by-laws are binding upon the shareholders, officers and employees. Strangers dealing with the bank are justified in assuming that the by-laws were regularly passed: *Royal Bank of India's Case*, L. R. 4 Ch. 252 (1869).

Annual Meeting.—Until 1871 the General Bank Acts did not authorize the shareholders to fix the date of the annual meeting. The day was formerly named in the several Acts of incorporation. In the case of a new bank, the day should be fixed at the first meeting of subscribers: sec. 13, s.-s. 3. The place of meeting is where the chief office of the bank is situate. Up to 1906 section 19 of the Act provided that the directors should fix the hour. In 1906 this last provision was struck out. If the shareholders' by-law named the hour as well as the day it would govern. If it did not the directors should name the hour in the notices. Public notice should be given for at least four weeks in a newspaper published at the place where the chief office is situate, and by mailing a copy of the notice to each shareholder: sec. 21. The by-laws should provide for the case of failure to hold the annual meeting on the day appointed, or failure to elect directors at it: sec. 27. Otherwise a special general meeting might be called in accordance with sec. 31. At this annual meeting the directors are elected: sec. 21; and a detailed annual statement of the affairs of the bank laid before the shareholders: sec. 54.

There is at common law a right of adjournment of the annual meeting: *Reg. v. Wimbledon Local Board*, 8 Q. B. D. 459 (1882). The notice need not state the business to be transacted at the adjourned meeting: *Scadding v. Lorant*, 3 H. L. C. 418 (1851).

The president presides *ex officio* at meetings of the board of directors; but at the annual meeting and other meetings of shareholders, they have a right to elect the presiding officer. Usually the president is voted to the chair, reads the annual report and moves its adoption. The meeting appoints its own secretary.

Proxies.—The by-laws may require proxies to have been produced twenty or any less number of days before a meeting. In the absence of a by-law they might be produced up to the time of the meeting, or even up to the time of voting. Only proxies that comply with all the provisions of the Act should be recorded. Thus the proxy must not be two years old; both the shareholder giving the proxy and the one to whom it is given must have held their stock for at least thirty days; neither of them can be a general manager, manager, clerk or other subordinate officer of the bank; and neither must be in arrear for any call on the stock being voted on or qualifying: sec. 32. When a regulation was passed requiring proxy papers to be attested, this was held to be imperative, and proxy papers not so attested were rejected: *Harben v. Phillips*, 23 Ch. D. 14 (1883). The Act does not contain such a provision, nor does it in express terms give power to the shareholders to make such provisions by by-law or otherwise; so that the question to be decided as to the validity of proxies would probably be whether they were reasonably sufficient for the purpose they were intended to serve, and whether they complied with the requirements of the Act and of any by-law authorized by it. A corporation may give a proxy: *Indian Zoedone Co.*, 26 Ch. D. 70 (1884). A proxy paper executed with the name of the proxy left blank may be subsequently filled up: *Ex parte Lancaster*, 5 Ch. D. 911

(1877). So also as to the date of a meeting at which it is to be used: *Ernest v. Loma Mines*, [1897] 1 Ch. 1.

Directors.—The Act of 1890 provided that the number of directors should not be less than five nor more than ten. The amending Act of 1905 struck out the maximum limit. Under the Companies Act it had been held that if the number was reduced below the minimum, the remaining directors could not transact business before vacancies were filled. Section 25 provides that a quorum of the remaining directors may continue to transact the business of the bank.

In the absence of a by-law a majority would be a quorum: *Howbeach Coal Co. v. Teague*, 5 H. & N. 151 (1860); *Re London, etc., Land Co.*, 31 Ch. D. 223 (1885); R. S. C. chap. 1, sec. 31 (*c*). If, however, without any by-law on the subject any three or more directors have usually conducted business at meetings of the board, such number would be held to be a quorum: *English and Irish Rolling Stock Co., Lyon's Case*, 35 Beav. 646 (1866); *Lyster's Case*, L. R. 4 Eq. 233 (1867). The stock qualification in section 20 may be increased but cannot be diminished. The president, vice-president, or a director may be removed by the shareholders for just cause: sec. 31, s.-s. 4.

Remuneration.—No president, vice-president, or other director can receive any sum for his services except under a by-law passed by the shareholders.

Discounts.—The shareholders may pass a by-law fixing the maximum amount that may be lent to directors, or to any firm or person, or to any shareholder, or to corporations. The aggregate amount of loans to directors, and firms of which they are partners, must be given in each monthly statement sent to the Minister of Finance: sec. 112, and schedule D.

2. A copy of the by-laws in force on the first day of July, one thousand nine hundred and thirteen, in respect of the several matters hereinbefore in this section set out, together with a copy of this section of the Act, shall, before the thirty-first day of December, one thousand nine hundred and thirteen, be sent to each shareholder at his last known post office address, as shown by the books of the bank; and after the first day of July, one thousand nine hundred and thirteen, within six months after the end of each successive five-year period, a copy of the by-laws, in respect of the said matters, in force at the end of each such period, shall be sent as aforesaid. New.

3. The shareholders may authorize the directors to establish guarantee and pension funds for the officers and employees of the bank and their families, and to contribute thereto out of the funds of the bank. 53 V. c. 31, s. 18, s.-s. 2.

This was first enacted in 1890. The Act of 1871 validated by-laws for establishing a guarantee fund for the employees of the bank, but did not in express terms authorize the voting of money of the bank to the fund, a provision which is continued in section 29, s.-s. 2, of the present Act.

4. Until it is otherwise prescribed by by-law under this section, the by-laws of the bank on any matter which may be regulated by by-law under this section shall remain in force, except as to any provision fixing the qualification of directors at an amount less than that prescribed by this Act. 53 V., c. 31, s. 18; 4-5 E. VII., c. 4, s. 3.

The minimum qualification of directors is fixed by section 20, varying according to the paid-up capital of the bank. The shareholders may raise the minimum qualification, but they cannot lower it.

19. Board of directors.—The stock, property, affairs and concerns of the bank shall be managed by a board of directors, who shall be elected annually in manner hereinafter provided, and shall be eligible for re-election. 53 V., c. 31, s. 19.

The board is to be composed of such number of directors, not less than five, as the shareholders may have determined: secs. 13 and 18. For the manner in which the shareholders may control the directors, see sections 18, 27, and 31. Among the specified duties and powers of directors are the following: To make by-laws: sec. 29; to appoint officers, clerks, etc., and to require them to give bonds: sec. 30; to call special meetings of the shareholders: sec. 31; to allot stock: sec. 34; to open stock books: sec. 36; to make calls: sec. 38; to make annual statements to the shareholders: sec. 54; to declare dividends: sec. 57; to make monthly returns to the Minister of Finance: sec. 112.

Such matters as the Act does not require to be done by by-laws may be done by resolution. By-laws should have the corporate seal affixed; as also such deeds and documents as require a seal by a law of the Dominion or of the Province where they are executed, or of the place where they are to be used. See *Bank of Upper Canada v. Widmer*, 2 U. C. O. S. 222 B. (1832); *Bank of Commerce v. Jenkins*, 16 O. R. 125 (1888).

No director shall vote on the question of a loan to himself, or on any other matter in which he has a pecuniary interest. When acting as a director he is in the position of a quasi-trustee for the shareholders, and should not have any adverse personal interest. He is bound to use

diligence in the performance of his duties: *Re Forest of Dean Coal Co.*, 10 Ch. D. 450 (1878); *Charitable Corporation v. Sutton*, 2 Atk. 405 (1742).

The duty of directors is so to conduct the business of the bank as to obtain for the benefit of the shareholders the greatest advantages that can be obtained consistently with the trust reposed in them by the shareholders and with honesty to other people. Directors who so use their powers as to obtain benefits for themselves at the expense of the other shareholders, without informing them of the facts, even though in so doing they act without fraud, and in the belief that they are doing nothing wrong, cannot be allowed to retain those benefits, but must account for them, so that all the shareholders may participate in them: *Alexander v. Automatic Telephone Co.*, [1900] 2 Ch. 56.

The business of the board should be done at regularly constituted meetings, attended by at least a quorum, as fixed by by-law. If all the directors are present notice is immaterial; if they are not, all should have had notice. The decisions arrived at should be in the form of resolutions. The assent even of a majority of the directors not given at such a meeting will not bind the bank: *D'Arcy v. Tamar Ry. Co.*, L. R. 2 Ex. 158 (1867); *Re Marseilles Extension Ry.*, L. R. 7 Ch. at p. 168 (1871); *O'Dell v. Boston and N. S. Coal Co.*, 29 N. S. 385 (1897).

There must be a quorum of qualified directors present to do business. If any directors are incompetent to act on account of being personally interested in any question, it cannot be disposed of unless there be a quorum qualified to act: *Yuill v. Greymouth Paint Co.*, [1904] 1 Ch. 32.

The acts of *de facto* directors in dealing with third persons within the powers conferred on them by the Act are valid, and will bind the bank, even though they may have been illegally or irregularly elected: *In re County Life Assurance Co.*, L. R. 5 Ch. 288 (1870); *Howard v.*

Patent Ivory Manufacturing Co., 38 Ch. D. 156 (1888); *Royal British Bank v. Turquand*, 6 E. & B. 327 (1856); *Mahoney v. East Holyford Mining Co.*, L. R. 7 H. L. 869 (1875); *Baird v. Bank of Washington*, 11 Sergeant & Rawle (Pa.), 411 (1824).

The above rule is followed in the case of outsiders partly on the ground that if shareholders allow certain persons to occupy before the public the position of directors, the bank should suffer rather than those who have been dealing with it in good faith.

In like manner, third parties in good faith are not affected by mere irregularities on the part of the directors or officers of a bank. Where the quorum of directors was three, and only two were present and authorized the secretary to affix the seal to a mortgage deed, it was held not necessary for the mortgagees to enquire whether the secretary was duly authorized, and it must be taken that the mortgage was duly executed: *County of Gloucester Bank v. Rudry Merthyr Co.*, [1895] 1 Ch. 325. See also *In re Bank of Syria* [1901] 1 Ch. 115; and to the same effect *Montreal & St. Lawrence L. & P. Co. v. Robert*, [1906] A. C. 203.

It is not incumbent on a person lending money to a corporation to ascertain that all the proceedings of the company and its shareholders, *inter se*, have been strictly regular: *Colonial Bank v. Willan*, L. R. 5 P. C. 417 (1874). Where a person on reading a deed of settlement would find, not a prohibition from borrowing, but a permission to do so on the authority of a resolution of the shareholders, he would have a right to infer the fact of a resolution authorizing that which on the face of the document appeared to be legitimately done: *Royal British Bank v. Turquand*, 6 E. & B. 327 (1856). But where there is a prohibition in the Act to incur certain expenditure except on a two-thirds vote of the shareholders, enquiry should be made whether this special provision was observed: *Commercial Bank v. Great Western Railway Company*, 3 Moore N. S. 295 (1865).

A bank is liable also for the torts of its directors committed by them when acting within the scope of their authority, even in the case of fraud and forgery; but the directors in such a case must be acting on behalf of the bank, and not merely to further their private ends: *Barwick v. English Joint Stock Bank*, L. R. 2 Ex. 265 (1867); *Weir v. Bell*, 3 Ex. D. 238 (1878); *Shaw v. Port Philip Gold Mining Co.*, 13 Q. B. D. 103 (1884); *British Mutual Banking Co. v. Charnwood Forest Ry. Co.*, 18 Q. B. D. 717 (1887).

A bank not otherwise liable for the acts of its directors or officers may become so by ratification; but if the act is *ultra vires* the bank, it cannot be ratified even with the assent of the shareholders: *Ashbury Ry. Co. v. Riche*, L. R. 7 H. L. at p. 681 (1875); *Irvine v. Union Bank of Australia*, 2 App. Cas. 366 (1877).

The board may delegate to a committee of its members or to officers of the bank certain matters connected with the business, and may generally delegate the execution of its decisions: *In re Taurine Co.*, 25 Ch. D. 118 (1883).

20. Qualification.—Each director shall hold stock of the bank, of which stock he shall be the absolute and sole owner in his individual right and not as trustee or in the right of another, on which not less than—

- (a) three thousand dollars have been paid up, when the paid-up capital stock of the bank is one million dollars or less;
- (b) four thousand dollars have been paid up, when the paid-up capital stock of the bank is over one million dollars and does not exceed three million dollars;

(c) five thousand dollars have been paid up, when the paid-up capital stock of the bank exceeds three million dollars.

2. No person shall be elected or continue to be a director unless he holds stock, of which he is the owner as aforesaid, paid up to the amount required by this Act, or such greater amount as is required by any by-law in that behalf.

By section 18 (*d*), the shareholders may, subject to this section, determine the qualification of directors. They may raise the requirements of the section but cannot lower them. Before 1890 it was sufficient to hold the above amounts of stock even if only partly paid up.

The words “ he shall be the absolute and sole owner in his individual right and not as trustee or in the right of another ” are new. These words would be construed to mean that he must be the beneficial as well as the legal owner.

In England where a director was required to hold the shares “ in his own right,” it was held to be sufficient for him to have the legal, without the beneficial ownership: *Pulbrook v. Richmond Consolidated Mining Co.*, 9 Ch. D. 610 (1878). This construction was questioned by Cotton, L.J., but upheld by Lindley, L.J., in *Bainbridge v. Smith*, 41 Ch. D. 462 (1889); and was followed in *Cooper v. Griffin*, [1892] 1 Q. B. 751; *Howard v. Sadler*, [1893] 1 Q. B. 1; *Sutton v. English and C. P. Co.*, [1902] 2 Ch. 502; and *Boschoek Co. v. Fuke*, [1906] 1 Ch. 148. The words above quoted which are now added to this section of our Act would appear to have been intended to prevent such a construction being put upon our Act as was put upon the English Act.

In *Ritchie v. Vermillion Mining Co.*, 4 O. L. R. 588 (1902), it was held, that the provision of the Act requiring a director to hold shares “ *absolutely in his own*

right ” was sufficient to prevent the English decisions above referred to from being followed.

3. A majority of the directors shall be natural born or naturalized subjects of His Majesty and domiciled in Canada. 53 V., c. 31, ss. 18 and 19. Am.

Before 1890 it was necessary that all the directors should be British subjects. Before 1902 the Companies Acts required that a majority of the directors should be resident in Canada, and in the case of companies incorporated by special Act that a majority should be British subjects. The Act of 1902, now R. S. C. chap. 79, abolished these requirements.

The words “ and domiciled in Canada ” in this subsection are new. It will be observed that the qualification of the directors is that they must be “ domiciled ” in Canada and not that they must be “ resident ” there.

- 21. Election of directors.**—The directors shall be elected by the shareholders at the annual general meeting.
2. The election shall take place at the place where the chief office of the bank is situate.
3. Public notice of the annual general meeting shall be given by the directors by publishing such notice, for at least four weeks previously to the time of holding the said meeting, in a newspaper published at the place where the chief office of the bank is situate, and by mailing a copy of such notice to each shareholder at his last known post office address, as shown by the books of the bank, at least twenty days prior to the time aforesaid. 53 V., c. 31, s. 19. Am.

The old charters named the day for the annual meeting and election of directors. Since 1871 the shareholders have had the right to fix the day or to change it. The meeting must be held in the city or town where the bank has its chief office, but not necessarily in the building in which the chief office is situate. The shareholders elect one of their number as chairman and appoint a secretary. As a rule the president is elected chairman of the meeting and moves the adoption of the annual report. The shareholders appoint scrutineers to receive and count the ballots. All voting at shareholders' meetings is by ballot. See section 32 for detailed directions.

The number of shareholders being indefinite no particular number or proportion is required by law for a quorum. See note under section 13.

When the proper notice has been given a majority of the votes of the shareholders present in person or by proxy decides all questions except the reduction of the capital of the bank: sec. 35; or the sale of the assets: sec. 102. The proceedings must be conducted regularly and in good faith.

A meeting was called for noon, and a few shareholders attended at that time and were aware that the president was on his way to the meeting. They organized at one minute past twelve and six minutes later had elected a board for the coming year, which appointed a president, a vice-president and a secretary. At ten minutes past twelve the president arrived, and found that all was over and that the shareholders had left. The court held that there was unreasonable haste, and that the proceedings were not in good faith, and set aside the election: *Armstrong v. McGibbon*, Q. R. 15 K. B. 345 (1906).

If notice of the meeting is published in a newspaper issued more frequently than once a week, one insertion a week is sufficient: sec. 2, s.-s. 3. On account of the special provision as to publication of notice of the annual meeting in this section and mailing copies to the

shareholders, publication in the *Canada Gazette*, under sec. 2, s.-s. 2, is not required.

22. Who shall be directors.—The persons, to the number authorized to be elected, who have the greatest number of votes at any election, shall be directors. 53 V., c. 31, s. 19.

It is not necessary that a director should have a majority of all the votes cast. The number, as fixed by the shareholders, not less than five, who stand highest on the list are elected.

The courts will set aside an election that has been carried by illegal or improper means: *Davidson v. Grange*, 4 Grant 377 (1854); *Re Moore and the Port Bruce Harbor Co.*, 14 U. C. Q. B. 365 (1856); *Toronto Brewing and Malting Co. v. Blake*, 2 O. R. 175 (1882); *Gilmour v. Hall*, M. L. R. 2 Q. B. 374 (1886). In Quebec the proceeding would be by *quo warranto* under Art. 987 of the Code of Procedure.

On a proceeding to test the election of a bank director, it was held that the polling of illegal votes in his favor would not of itself annul his election unless it were shown that some other candidate polled more legal votes: *Gibb v. Poston*, 16 L. C. R. 257 (1866).

In the Province of Quebec a Judge in vacation has power to enquire into the validity of the election of a bank director, as the bank is a public corporation: *Henry v. Simard*, 16 L. C. R. 273 (1866).

23. Equality of votes.—If it happens at any election that two or more persons have an equal number of votes, and the election or non-election of one or more of such persons as a director or directors depends on such equality, then the directors who have a greater number of votes, or the majority of them, shall, in order

to complete the full number of directors, determine which of the said persons so having an equal number of votes shall be a director or directors. 53 V., c. 31, s. 19.

The chairman of the shareholders' meeting has a casting vote on all questions in case of a tie, except as to the election of a director: sec. 32, s.-s. 4.

24. President and vice-presidents.—The directors, as soon as may be after their election, shall proceed to elect, by ballot, from their number a president and one or more vice-presidents.

2. The directors may also elect by ballot one of their number to be honorary president. 53 V., c. 31, s. 19; 4-5 E. VII., c. 4, s. 4. Am.

The president of a bank occupies a very important and responsible position, and yet it is surprising how little is said about him or his office in the Act. The only duties specially assigned to him are: (1) presiding at meetings of the board, sec. 28; (2) executing transfers of forfeited shares: sec. 41, s.-s. 3; (3) signing the bills or notes issued by the bank: sec. 73; (4) signing the monthly and other returns to the government: secs. 112, 113, and 114. The only privilege given him beyond his fellow directors is that of giving a second or casting vote at board meetings in case of a tie: sec. 28, s.-s. 3. In case of his absence the vice-president takes his place, exercises his powers and performs his duties. In practice the president is usually expected to give more time and attention to the bank, and receives additional remuneration therefor; but his powers and duties, other than those above specified, are only such as are expressly or impliedly given or assigned to him by the shareholders or the board by by-law or otherwise.

When it is alleged that a cheque was given for an illegal purpose, the personal knowledge of the president

of the bank of the object for which it was given is not the knowledge of the bank, when the president is not the officer who acts in the matter on behalf of the bank: *Bank of Montreal v. Rankin*, 4 L. N. 302 (1881).

The authorizing of more than one vice-president is new.

Sub-section 2 authorizing the election of an honorary president by the board was enacted by the amending Act of 1905. He has none of the duties or powers of the president assigned to him: sec. 2 (*k*). The directors have the decision as to how many vice-presidents the bank shall have, and as to whether there shall be an honorary president. The shareholders have no voice either as to how many vice-presidents there shall be, or as to what directors shall be elected to any of these positions.

25. Vacancies, how filled.—If a vacancy occurs in the board of directors the vacancy shall be filled in the manner provided by the by-laws: Provided that, if the vacancy is not filled, the acts of a quorum of the remaining directors shall not be thereby invalidated. 53 V., c. 31, s. 19.

The shareholders have the right to pass a by-law regulating the method of filling vacancies in the board when they occur during the year.

If they have not done so a vacancy cannot be filled except at a special meeting of shareholders. So long as a quorum remains, the remaining directors may do business provided a quorum attends the meeting: *Re Scottish Petroleum Co.*, 23 Ch. D. 413 (1883); *In re Bank of Syria*, [1901] 1 Ch. 115. If the by-law provides that the remaining directors are to fill vacancies, and the number of directors falls below the quorum, a special meeting of shareholders would be necessary to fill the vacancies:

Newhaven Local Board v. Newhaven School Board, 30 Ch. D. 350 (1885); *Sovereign Co. v. Whitside*, 12 O. L. R. 638 (1906).

Where no by-law on the subject had been passed the directors undertook to fill a vacancy. The quorum of the board was three. A resolution, seconded by the new director at a meeting at which three others were present was upheld, although his appointment was a nullity: *Bank of Liverpool v. Bigelow*, 12 N. S. (3 R. & C.) 236 (1878).

The proviso of this section, that so long as there is a quorum of directors their action is valid, overcomes the difficulty that arose under the Ontario and English Companies Acts, when the number of directors fell below the minimum required, in the *Toronto Brewing and Malting Co. v. Blake*, 2 O. R. 175 (1882), and in *re Alma Spinning Co.*, *Bottomley's Case*, 16 Ch. D. 681 (1880).

26. If a vacancy occurs in the office of the president or vice-president, the directors shall, from among themselves, elect a president, or a vice-president, who shall continue in office for the remainder of the year. 53 V., c. 31, s. 19.

27. Postponed election of directors.—If an election of directors is not made on the day appointed for that purpose, such election may take place on any other day, according to the by-laws made by the shareholders in that behalf.

2. The directors in office on the day appointed for the election of directors shall remain in office until a new election is made. 53 V., c. 31, s. 20.

If no such by-law has been made, it would be necessary to call a special meeting of shareholders under section 31 for the election of directors.

28. Meetings of directors.—The president, or in his absence a vice-president, shall preside at all meetings of the directors.

2. If at any meeting of the directors both president and vice-presidents are absent, one of the directors present, chosen to act *pro tempore*, shall preside.

3. The president, a vice-president or president *pro tempore*, so presiding, shall vote as a director, and shall, if there is an equal division on any question, also have a casting vote.

53 V., c. 31, s. 21. Am.

While the president of a bank usually takes an active part in the management of its affairs, the special powers given to him and the duties specially assigned to him by the Act, beyond those assigned to the directors generally, are very few. Besides the duty of presiding at the meetings of the board, he is one of the officers named to execute the transfer of forfeited shares which have been sold: sec. 41, s.-s. 3, and of shares sold under execution; sec. 46, s.-s. 2; or for a debt to the bank: sec. 77, s.-s. 3; to sign the bills and notes of the bank: sec. 73; to sign the monthly returns to the Government: sec. 112, s.-s. 4; special returns when asked for: sec. 113; and the annual returns of sums lying more than five years unclaimed: sec. 114, s.-s. 5.

The by-laws contemplated by the next section will almost invariably assign to him important duties, especially as to his becoming a party to important contracts on the part of the bank, which may not come within the scope of the duties assigned to the general manager.

The directors may frame by-laws or rules regulating the transaction of business at meetings of the board; in default of these, the president or presiding director

would be governed by the usage of the board, or the well-established rules common to such deliberative bodies. They may make any regulations they choose, except that they cannot override any provision of the Act, or any by-law passed by the shareholders under section 18.

The business of the board should be transacted at regularly called meetings attended by a quorum of the directors. The assent of a quorum of the directors given individually elsewhere will not bind the bank. Full and correct minutes of each meeting should be kept and recorded. Such minutes are usually read and confirmed at the beginning of the next succeeding regular meeting.

29. General powers of directors.—The directors may make by-laws and regulations, not repugnant to the provisions of this Act, or to any by-law duly passed by the shareholders or to the laws of Canada, with respect to—

- (a) the management and disposition of the stock, property, affairs and concerns of the bank;
- (b) the duties and conduct of the officers, clerks and servants employed therein; and,
- (c) all such other matters as appertain to the business of a bank.

2. All by-laws of the bank heretofore lawfully made and now in force with regard to any matter respecting which the directors may make by-laws under this section, including any by-laws for the establishing of guarantee and pension funds for the employees of the bank, shall remain in force until they are repealed or altered by other by-laws made under this Act. 53 V., c. 31, s. 22. Am.

The directors cannot make by-laws or regulations repugnant to by-laws validly passed by the shareholders under section 18. This was formerly left to implication, but is now expressly declared.

Under the head of " officers " in this section would be comprised not only those usually designated by that name, but also the president, vice-presidents and a managing director, if the bank should have such an officer, the shareholders being the body to deal with the remuneration of these latter under section 18 (*g*). These by-laws do not require to be approved by the shareholders.

By-laws passed by the directors or shareholders while binding upon the shareholders and officers of the bank, are not binding upon third parties unless they are aware of them: *In re Asiatic Banking Corporation*, L. R. 4 Ch. 252 (1869).

By section 18 the shareholders may authorize the directors to establish these guarantee and pension funds and to contribute thereto out of the funds of the bank.

30. Appointment of officers.—The directors may appoint as many officers, clerks and servants as they consider necessary for the carrying on of the business of the bank.

2. Such officers, clerks and servants may be paid such salaries and allowances as the directors consider necessary. 53 V., c. 31, s. 23, s.-s. 1,
3. Am.

Sub-section 2 of this section formerly provided for the appointment of a director or directors for any branch of a bank. The omission of the clause will not prevent this being still done if deemed necessary or desirable; the question of their remuneration being one for the shareholders: sec. 18 (*g*).

The term " officers " in this section would not include the president or vice-presidents, whose election is provided for in section 24; nor the auditors provided for by section 56. The remuneration of these is fixed by the shareholders: sec. 18 (*g*), and sec. 56 (16). It would include the manager, and the subordinate officers of the bank. The duties of the manager and of the other officers should be defined by a by-law passed under section 29. As to some of them the name will indicate the duties and scope of their authority. Third parties dealing with them in good faith may assume that they have such powers as are usually possessed by such officers respectively: *Smith v. Hull Glass Co.*, 11 C. B. 897 (1852).

The cases given below will help to illustrate the powers and responsibilities of these officers, and as to how far banks have been held liable for their acts or negligence.

Although directors are only elected for a year they may appoint officers, etc., for a longer period: *Dedham Bank v. Chickering*, 3 Pickering (Mass.) 335 (1825).

ILLUSTRATIONS.

1. The manager of a bank has not, as such, authority to sell land belonging to the bank, and it is doubtful if a verbal authorization by the directors is sufficient: *Dominion Bank v. Knowlton*, 25 Grant 125 (1877).

2. Where a note was made payable to " The Canadian Bank of Commerce or order " it was endorsed " D. H. Charles, manager." It was urged that the endorsement should have been by and in the name of the bank, under the corporate seal, or at least with the name of the bank added to the manager's name, but the Court did not find it necessary to determine the point: *Small v. Riddell*, 31 U. C. C. P. 373 (1880).

3. A bank sold lumber held by it as security for advances, and the purchaser required a guarantee which

the directors resolved to give after examination by a culler. The manager, however, gave a written guarantee in the name of the bank without employing a culler. The purchaser being in good faith, the bank was held liable on the guarantee: *Dobell v. Ontario Bank*, 3 O. R. 299 (1882).

4. A bank manager is not acting beyond the scope of his authority in accepting the cheque of a customer to deliver to another customer on a particular day, or on the happening of a specific event: *Grieve v. Molsons Bank*, 8 O. R. 162 (1885).

5. Where a deed of composition was executed by a local manager in the name of the bank under an ordinary seal, it was held not to be binding on the bank, not being under the corporate seal, nor under a signature or sign manual whereby it executed documents: *Bank of Commerce v. Jenkins*, 16 O. R. 215 (1888).

6. A bank sued one of its branch managers for damages on two grounds: (1) for having taken a joint note when instructed to take only a joint and several one, and (2) for having voided the note by interlining the words "jointly and severally," intending to have the words initialled by the makers, which was not done. He subsequently erased the inserted words. It was held that he was liable on the first ground; but as the note he took was as good a security as if in the other form the bank was only entitled to nominal damages. Held on the second point that as he acted in good faith, and as his superior officer and the bank solicitor were of opinion that his acts had not voided the note, higher knowledge could not reasonably be expected from one in his position: *La Banque Provinciale v. Charbonneau*, 6 O. L. R. 302 (1903).

7. The manager of a bank may deal in the ordinary and proper course of banking business with trading corporations, even though he is interested as a shareholder and director in them, and this is not necessarily a violation of the rule that an agent cannot be allowed to place

his duty in conflict with his interests: *Bank of Upper Canada v. Bradshaw*, L. R. 1 P. C. 479; 17 L. C. R. 273 (1867).

8. Where the Bank of Montreal, by its manager, accepted cheques drawn on it by the City Bank, and the latter deposited them for value in the Banque Nationale, it was held that the Bank of Montreal could not refuse its acceptance thus made, and was bound to guarantee and protect the City Bank from all losses thereunder: *Banque Nationale v. City Bank*, 17 L. C. J. 197 (1873).

9. The president and manager of a bank has not, as such, authority to give to a creditor of the bank a considerable amount of the notes discounted by the bank to guarantee a debt existing before the pledge; a special resolution of the board would be necessary: *Exchange Bank v. C. & D. Savings Bank*, 14 R. L. 8 (1885).

10. Where the cashier of a bank borrowed money from a savings bank in his own name, but on the representation that it was for his bank, and the money was paid to him personally and not as cashier, but subsequently changes were made in the books, charging the loan to the bank, the bank having stopped payment, and the new board elected after the suspension not having repudiated the entries for about a year, it was held by the Court of Appeal for Quebec that it was ratified by acquiescence: *City and District Savings Bank v. Jacques Cartier Bank*, 30 L. C. J. 106 (1886). This was reversed by the Privy Council on the ground that the new board had full knowledge of the facts, and that acquiescence and ratification would not apply to a debt which the bank never owed: *Banque Jacques Cartier v. C. & D. Savings Bank*, 13 App. Cas. 111 (1887).

11. Where the president and manager of a bank had accepted cheques of a customer and made them payable at a future day, and these were discounted by another bank and paid at maturity by the first-named bank, the

latter was held liable for cheques subsequently accepted and discounted in the same way, payment having been refused on the ground that the president and manager had exceeded his powers: *Exchange Bank v. People's Bank* (S. C. Can.), 10 L. N. 362; 7 C. L. T. 387 (1887).

12. A bank which makes a loan and accepts as collateral certain shares of its own stock, which it procures to be transferred to its manager, is liable to the borrower for the return of this stock when the latter has paid the debt, although the transfer was illegal: *Exchange Bank v. Fletcher*, 19 R. L. 377 (1890).

13. Directors cannot divest themselves of their personal responsibility. While they are at liberty to employ such assistants as may be required to carry on the business of the bank, they are nevertheless responsible for the fault and misconduct of the employees, unless the injurious acts complained of are such as could not have been prevented by the exercise of reasonable diligence on their part: *McDonald v. Rankin*, M. L. R. 7 S. C. 44 (1890); *Stavert v. Lovitt*, 42 N. S. 449 (1908).

14. Where a cashier whose duty it was to obtain the acceptance of bills of exchange, in which the bank was interested, fraudulently, but without the knowledge of the president or directors, by a material false representation, induced the drawee to accept such a bill, the bank was held liable: *Mackay v. Commercial Bank*, L. R. 5 P. C. 394 (1874).

15. Where the agent of a bank, who was a partner in a firm doing business with the bank, obtained the signature of respondent to accommodation drafts which he discounted for the benefit of his firm, the latter became liable, although their name did not appear on the drafts: *Merchants Bank v. Whidden*, 19 S. C. Can. 53 (1890).

16. It is no part of the business of the agent of a bank to start a criminal prosecution, and when he does so without special authority the bank is not liable:

Thompson v. Bank of Nova Scotia, 13 C. L. T. 311 (1893).
See *Owston v. Bank of N. S. W.*, 4 App. Cas. 270 (1879).

17. The local manager of a bank having received a draft, induced the drawee to accept it by falsely representing that certain goods of his own were held by the bank as security for the draft. Held, that the bank was not bound by such representation; that the knowledge of the manager with which the bank would be affected should be confined to knowledge of what was material to the transaction, and the duty of the manager to make known to the bank: *Richards v. Bank of Nova Scotia*, 26 S. C. Can. 381 (1896).

18. Where an acceptance was indorsed to a bank, and the cashier sued on it in his own name, and the acceptor paid the amount to the cashier, it was held to be a fair inference that this was payment to the bank: *Seeley v. Cox*, 28 N. S. 210 (1896). Affirmed by the Supreme Court of Canada: *Coutlee's Digest*, p. 199.

19. The local manager of a bank induced a lady who had a deposit account to purchase houses on which the bank had a lien. She gave him up the receipt, and he gave her one for the balance after deducting the price of the houses. He appropriated the money. The jury found that he led her to believe he was acting for the bank, and that he had authority to assign an equitable mortgage. The bank was held liable to her: *Thompson v. Bell*, 23 L. J. Ex. 321 (1854).

20. An officer of a bank occupies a fiduciary position, and any secret profit made by him in connection with the business of the bank, belongs to the bank: *General Exchange Bank v. Horner*, L. R. 9 Eq. 480 (1870).

21. If an officer exceeds his authority, the bank may be bound if the act is within the scope of his employment, and the other party is not aware that he is exceeding his authority: *Bayley v. Manchester, etc., Ry. Co.*, L. R. 8 C. P. 148 (1873).

22. Where it was known to the customer of a bank, that an officer had no authority without express approval of the bank manager to receive the money or to fix the terms on which it was to be transferred to a distant point, and there was no holding out by the bank of the officer as apparently invested with any authority greater than he was known to the customer to possess, the bank was not liable for misappropriation of the money by the officer: *Russo-Chinese Bank v. Li Yan Sam*, [1910] A. C. 174.

The powers and duties of a cashier in the United States have been laid down as follows:

He is the chief executive officer through whom the whole financial operations of the bank are conducted. He receives and pays out its moneys, collects and pays its debts, and receives and transfers its commercial securities. Subordinate officers may be appointed, but they are under his direction. They may be clothed with power to certify cheques, but this would not affect his right to do the same thing. The directors may limit his authority as they deem proper, but this would not affect those to whom the limitation is unknown: *Merchants' Bank v. State Bank*, 10 Wallace (U. S.), at p. 650 (1870).

The ordinary duties of a cashier do not comprehend the making of a contract, which involves the payment of money, without an express authority from the directors, unless it be such as relates to the customary transactions of the bank: *Morse v. Mass. National Bank*, 1 Holmes C. C. (U. S.) 209 (1873); *U. S. v. Bank of Columbus*, 21 Howard (U. S.), 364 (1858).

He may indorse, negotiate and transfer all negotiable paper on behalf of the bank: *Wild v. Bank of Passamaquoddy*, 3 Mason C. C. (U. S.) 505 (1825); but without special authority he has not a right to dispose of non-negotiable paper, or other property the dealing in which is not in the ordinary course of banking: *Barrick v. Austin*, 21 Barbour (N. Y.) 241 (1855).

If the directors, through inattention or otherwise, allow the cashier to pursue a line of conduct for a considerable period without objection, the bank would be bound in favor of parties dealing with him in good faith: *Caldwell v. National Bank*, 64 Barbour (N. Y.) 333 (1869).

The word cashier is not now used in Canadian banks; the duties formerly discharged by the cashier are now, as a rule, assigned with others to the general manager.

3. Security.—The directors shall, before permitting any general manager, manager, or other officer, clerk or servant of the bank to enter upon the duties of his office, require him to give a bond, guarantee or other security to the satisfaction of the directors, for the due and faithful performance of his duties. 53 V., c. 31, s. 23, (4). Am.

The words “general manager, manager, or other,” are new, having been substituted for the word “cashier.”

The taking of security “for the due and faithful performance of his duties” from each of these officers is compulsory. Directors who neglect this duty might be held personally responsible in case of loss.

A contract of guarantee, by the Statute of Frauds and by Article 1233 of the Civil Code of Quebec, must be in writing. The employment of the person guaranteed is a sufficient consideration for the contract. The relations and liability of the respective parties towards each other will be determined by the laws of the respective provinces on the subject of suretyship, which, however, do not materially differ.

Formerly private bonds were the rule; now the bonds of incorporated guarantee companies are generally given or required. These usually contain special stipulations as to employment, notice of irregularities, etc., which

should be carefully examined on behalf of the bank, to see that they fully comply with the requirements of the Act. It is to be borne in mind that a surety's liability is not to be extended beyond the terms of his engagement. As a bond in the terms of the Act would be held to guarantee not only the honesty of the employee, but also his competency for the position, any material change in his position or duties which increases the risk would discharge the surety, unless the contract makes provision for it. Where the agreement between the bank and the employee is made a part of the contract with the surety, a change, even if not material, would bring about the same result. In view of the law of all the provinces being so favorable to the release of sureties, banks cannot be too careful as to the bonds they accept. The following cases will aid in illustrating the law on the subject:

ILLUSTRATIONS.

1. A bond given in favor of an agent of a bank will not cover losses occurring through his fault after his appointment as cashier: *Bank of Upper Canada v. Covert*, 5 U. C. O. S. 541 (1836).

2. Where the bond said nothing about the salary of the employee, the sureties cannot set up as a defence a change in the mode of his remuneration: *Bank of Toronto v. Wilmot*, 19 U. C. Q. B. 73 (1859).

3. Where a bond was given for faithful service "as clerk, or in any other capacity whatsoever," a plea that the clerk was transferred to the position of teller, whereby the risk was increased, is bad: *Royal Canadian Bank v. Yates*, 19 U. C. C. P. 439 (1869).

4. The sureties of an absconding bank cashier are not relieved from liability by showing that the directors employed him in transacting what was not properly banking business, in the course of which he appropriated the bank funds to his own use; the claim against the sureties being for the money so appropriated by him, and not for

losses occasioned by such illegal transactions. Nor are the sureties discharged by the negligence of the directors in not inspecting the books and detecting such misappropriation, unless it amounts to connivance, or such gross negligence as to warrant the inference of fraud: *Springer v. The Exchange Bank*, 14 S. C. Can. 716 (1887).

5. Where a teller was engaged at a salary of £300 per annum, and by the same deed defendants became his sureties, a subsequent reduction of his salary without the consent of the sureties freed them from liability for losses occurring after such reduction: *City Bank v. Brown*, 2 L. C. R. 246 (1852).

6. The allowing by a bank manager of overdrafts, without security, is infidelity and an irregularity within the meaning of the bond guaranteeing the bank against loss by want of integrity, honesty and fidelity, or by negligence, default or irregularity on his part: *Bank of Toronto v. European Assurance Society*, 14 L. C. J. 186 (1870). Affirmed by the Privy Council, 7 R. L. 57 (1875).

7. An employee left a large sum of money in open bags in his room while he went to lunch. In his absence the room was broken into and the money stolen. The company that had guaranteed that he should diligently and faithfully discharge his duties was held liable: *Citizens Ins. Co. v. G. T. R. Co.*, 3 L. N. 312 (1880).

8. A package of bank notes was found to contain \$6,300 less than the amount which the teller had endorsed on it. The fraud had been going on for years, but was skilfully covered up by false entries, so that it had escaped detection during the regular inspections. The company which had guaranteed his fidelity was held liable, but only for \$1,400, the amount taken subsequent to their guarantee: *Banque Nationale v. Lesperance*, 4 L. N. 147 (1881).

9. A bond given in favor of a cashier, for the faithful performance of his duties “ as an employee of the bank ”

does not cover defalcations after he was made managing director and president: *Exchange Bank v. Gault*, 30 L. C. J. 259 (1886).

10. A bank cashier took to his residence bank notes to sign. He brought them back to the bank, and there substituted \$5 notes for \$10 notes. It was held that as the taking of the notes to his house had not contributed to the defalcation, there was no negligence on the part of the bank to avoid the policy, and his act came under the clause guaranteeing against loss caused by "fraud and dishonesty amounting to embezzlement." He also induced the ledger-keeper to certify his cheques for a large sum, although he had no funds, and some of these were paid. This was also held to come under the same clause. The bank gave notice to the guarantee company the day after his fraud was discovered. This was held to be in reasonable time, and the fact that after his absconding the bank followed him and recovered a large part of the money, did not relieve the guarantee company, as there remained a loss exceeding the amount of the policy: *London Guarantee Co. v. Hochelaga Bank*, Q. R. 3 Q. B. 25 (1893).

11. A bond given for the good conduct of an employee, "a clerk," does not cover defaults after he became manager, it being shewn conclusively that he ceased to be clerk when he became manager: *Anderson v. Thornton*, 3 Q. B. 271 (1842).

12. Moneys received by an agent not in pursuance of the particular agency disclosed to the surety in the bond, are not covered by a general clause as to handing over moneys received: *Napier v. Bruce*, 8 Cl. & F. 470 (1842).

13. Where a bank without the consent of the surety made a new arrangement with a clerk increasing his salary, and also increasing his liability, the surety was held to have been relieved: *Bonar v. Macdonald*, 3 H. L. Cas. 226 (1850).

14. Where the mode of payment of the employee is recited in the bond, and this is changed, it may operate to discharge the surety: *London & N. W. Ry. Co. v. Whinray*, 10 Exch. 77 (1854).

15. A surety guaranteeing the honesty of an employee is not relieved from his obligation because the employer fails to use all the means in his power to guard against the consequences of dishonesty. Mere passive inactivity is not enough; there must be some positive act done to the prejudice of the surety, or such degree of negligence as to imply connivance and to amount to fraud: *Black v. Ottoman Bank*, 8 Jur. N. S. (P. C.) 801 (1862).

16. If the insured should be guilty of dishonesty and the bank retain him in its service without the knowledge or consent of the surety, express or implied, it will have no recourse against the surety for any subsequent loss: *Phillips v. Foxall*, L. R. 7 Q. B. 666 (1872); *Sander-son v. Aston*, L. R. 8 Ex. 73 (1873).

17. A bond well and truly to execute the duties of cashier or teller of a bank, includes not only honesty, but reasonable skill and diligence. If, therefore, he performs those duties negligently and unskilfully, or if he violates them from want of capacity and care, the condition of the bond is broken: *Barrington v. Bank of Washington*, 14 Sergeant & Rawle (Pa.) 405 (1826); *American Bank v. Adams*, 12 Pickering (Mass.) 303 (1832); *Minor v. Mechanics' Bank*, 1 Peters 46 (1828).

18. Where the bond was given in favor of an assistant bookkeeper in a bank, that he should faithfully discharge the trust reposed in him as such assistant bookkeeper, and while keeping a journal which until after the bond was given had been kept by the teller, he embezzled money and made fraudulent entries in this journal to conceal his crime, it was held that the sureties were not relieved: *Rochester City Bank v. Elwood*, 21 N. Y. 88 (1860). See also *Detroit Savings Bank v. Ziegler*, 49 Mich. 157 (1882).

A number of the banks have established guarantee funds of their own under sections 18 and 29, to which both the banks themselves and the employees contribute.

31. Special general meetings.—A special general meeting of the shareholders of the bank may be called at any time by—

- (a) the directors of the bank or any four of them; or,
- (b) any number not less than twenty-five of the shareholders, acting by themselves or by their proxies, who are together proprietors of at least one-tenth of the paid-up capital stock of the bank.

2. Such directors or shareholders shall give six weeks' previous public notice, specifying therein the object of such meeting.

3. Such meeting shall be held at the usual place of meeting of the shareholders. 53 V., c. 31, s. 24.

The public notice of such special meeting should be published for six weeks in one or more newspapers published at the place where the chief office of the bank is situate, and also in the *Canada Gazette*: sec. 2, s.-s. 2. No business can come before the meeting except that specified in the notice. The proxies should be less than two years old, and the other provisions of the next section will apply to the proceedings at such meeting.

Notices of special meetings are not to be construed with excessive strictness, provided they give the shareholders fair notice of what is proposed to be done: *Wright's Case*, L. R. 12 Eq. 335n (1871); *Irvine v. Union Bank of Australia*, 2 App. Cas. 375 (1877); *Boschoek Co.*

v. *Fuke*, [1906] 1 Ch. 148. Notice of a meeting for "special business" is not sufficient for such a meeting: *Wills v. Murray*, 4 Ex. 843 (1850).

The meeting need not necessarily be held in the room in which the shareholders usually meet. A meeting called for some suitable place in the town where the chief office is situate would, no doubt, be held to be a reasonable compliance with the section, especially if the other could not be obtained for the purpose.

4. If the object of the special general meeting is to consider the proposed removal, for maladministration or other specified and apparently just cause, of the president or vice-president, or of a director of the bank, and if a majority of the votes of the shareholders at the meeting is given for such removal, a director to replace him shall be elected or appointed in the manner provided by the by-laws of the bank, or, if there are no by-laws providing therefor, by the shareholders at the meeting.
5. If it is the president or vice-president who is removed, his office shall be filled by the directors in the manner provided in case of a vacancy occurring in the office of president or vice-president. 53 V., c. 31, s. 24.

In the absence of such special power as is contained in this section, the shareholders would have no right to remove the president, vice-president or a director; but they would hold office for the year for which they were elected, unless removed by the Court: *Imperial Co. v. Hampson*, 23 Ch. D. 1 (1882).

The cause of complaint should be specified in the notice. A notice to remove "any of the directors" would justify a resolution to remove all of them: *Isle of*

Wight Ry. Co. v. Tahourdin, 25 Ch. D. 320 (1883). No particular quorum of shareholders or number of shares is required at such a meeting; but the number should not be unreasonably small: *Lindley on Companies* (6th ed.) p. 208. If the proceedings be *bona fide* the Courts will not interfere with the discretion of the shareholders. The voting on the question of removal must be by ballot: sec. 32. When a vacancy has been created by such a vote the vacant place on the board will be filled in the manner provided by the by-laws of the bank. If there be no by-law on the subject the shareholders will fill the place on the board by a ballot vote at such meeting. In such a case this should be mentioned in the notice. If it should be the president or vice-president that has been thus removed, the board, as thus filled up, would elect a successor in the manner provided by section 24.

32. Voting of shareholders.—Every shareholder shall, on all occasions on which the votes of the shareholders are taken, have one vote for each share held by him for at least thirty days before the time of meeting.

2. In all cases when the votes of the shareholders are taken, the voting shall be by ballot. 53 V., c. 31, s. 25.

If some shares are fully paid up and others only partly, the latter have equal voting right with the former, provided no calls are owing and unpaid: *Purdom v. Ontario Loan and Debenture Co.*, 22 O. R. 597 (1892).

No shares which have been transferred within the thirty clear days preceding the meeting can be voted upon by either party.

The meeting may appoint scrutineers, although the Act is silent on the point: *Wandsworth Co. v. Wright*, 22 L. T. N. S. 404 (1870).

A candidate for the office of director should not be a scrutineer on a vote for the election of directors: *Dickson v. McMurray*, 28 Grant 533 (1881).

A shareholder may vote although not present when the poll was demanded: *Campbell v. Maund*, 5 A. & E. 865 (1836).

The poll should be kept open until all the votes present are recorded: *Reg. v. Wimbledon*, 8 Q. B. D. 459 (1882); *Reg. v. St. Pancras*, 11 A. & E. 15 (1839); *Reg. v. Lambeth*, 8 A. & E. 356 (1838).

3. All questions proposed for the consideration of the shareholders shall be determined by a majority of the votes of the shareholders present or represented by proxy.
4. The chairman elected to preside at any meeting of the shareholders shall vote as a shareholder only, unless there is a tie, in which case he shall, except as to the election of a director, have a casting vote. 53 V., c. 31, s. 25.

At all meetings of shareholders they have the right to elect any one of their number as chairman. The secretary need not be a shareholder. In many bodies certain questions require a two-thirds or three-fourths vote; but at meetings of bank shareholders a bare majority of the shares present and voting is sufficient in nearly all cases. A by-law to reduce the stock requires a majority of the whole stock: sec. 35. A resolution approving of an agreement to sell the assets of a bank to another bank requires the assent of shareholders representing two-thirds of the subscribed capital of the selling bank: sec. 102.

While a director cannot in the board vote on any question in which he has a personal pecuniary interest, a shareholder, even though he be a director, is not under the same disability at a meeting of shareholders: *N. W.*

Transportation Co. v. Beatty, 12 App. Cas. 589 (1887); *Salomon v. Salomon*, [1897] A. C. 22; *Burland v. Earle*, [1902] A. C. 94.

The chairman should conduct the proceedings according to the Act and the recognized rules of order and procedure, subject to an appeal to the meeting by any dissatisfied shareholder.

5. If two or more persons are joint holders of shares, any one of the joint holders may be empowered, by letter of attorney from the other joint holder or holders, or a majority of them, to represent the said shares, and to vote accordingly. 53 V., c. 31, s. 25.

Joint holders of shares, such as executors, trustees, a firm, or the like, may either all join in a proxy to another shareholder, or one of them may be authorized by the others or a majority of them to act. "When an act or thing is required to be done by more than two persons, a majority of them may do it": Interpretation Act, R. S. C. chap. 1, sec. 31 (c). They might also all attend and act jointly.

6. Shareholders may vote by proxy, but no person other than a shareholder eligible to vote shall be permitted to vote or act as proxy.
7. No general manager, manager, clerk or other subordinate officer of the bank shall vote either in person or by proxy, or hold a proxy for the purpose of voting. Am.
8. No appointment of a proxy to vote at any meeting of the shareholders of the bank shall be valid for that purpose unless it has been made or renewed in writing within one year last preceding the time of such meeting. Am. 53 V., c. 31, s. 25.

See note under section 18 as to proxies. A shareholder to be entitled to vote on his own shares must have held the shares on which he proposes to vote at least 30 days before the meeting: s.-s. 1; must not be one of the officers of the bank indicated in s.-s. 7; and must not be in arrear for any call: s.-s. 9. To vote as proxy, his proxy must have been produced and recorded for the time fixed by by-law of the bank: s. 18 (*b*); and must not be a year old.

9. No shareholder shall vote, either in person or by proxy, on any question proposed for the consideration of the shareholders of the bank at any meeting of the shareholders, or in any case in which the votes of the shareholders of the bank are taken, unless he has paid all calls made by the directors which are then due and payable. 53 V., c. 31, s. 25.

CAPITAL STOCK.

33. **Increase of capital.**—The capital stock of the bank may be increased, from time to time, by such percentage, or by such amount, as is determined upon by by-law passed by the shareholders at the annual general meeting, or at any special general meeting called for the purpose.
2. No such by-law shall come into operation, or be of any force or effect, unless and until a certificate approving thereof has been issued by the Treasury Board.
3. No such certificate shall be issued by the Treasury Board unless application therefor is made within three months from the time of the passing of the by-law, nor unless it appears to the

satisfaction of the Treasury Board that a copy of the by-law, together with notice of intention to apply for the certificate, has been published for at least four weeks in *The Canada Gazette*, and in one or more newspapers published in the place where the chief office of the bank is situate.

4. Nothing herein contained shall be construed to prevent the Treasury Board from refusing to issue such certificate if it thinks best so to do.
53 V., c. 31, s. 26.

No notice is required by the Act to enable the shareholders to pass such a by-law at the annual meeting. Shareholders dissatisfied with the action of the meeting could appeal to the Treasury Board. The Treasury Board may refuse to issue a certificate in case a by-law is passed; but cannot issue one in case the by-law is defeated at the meeting.

The last clause was no doubt inserted to prevent the recurrence of such a case as that of *The Massey Manufacturing Co.*, 13 Ont. A. R. 446 (1886), where it was held that under the Ontario Letters Patent Act the Provincial Secretary was obliged to issue the notice of an increase of capital, when the conditions were complied with, and that he could exercise no discretion in the matter.

Where a bank purchases the assets of another bank and decides to increase its capital for that purpose, and the shareholders approve, the Governor in Council may authorize such increase without the observance of the provisions of this section: secs. 103, 104 and 105.

- 34. Allotment of stock.**—Any of the original unsubscribed capital stock, or of the increased stock of the bank, shall, at such time as the directors determine, be allotted to the then

shareholders of the bank *pro rata*, at such rate and on such terms as are fixed by the directors: Provided that—

- (a) no fraction of a share shall be so allotted;
 - (b) in no case shall a rate be fixed by the directors which will make the premium, if any, paid or payable on the stock so allotted, exceed the percentage which the rest or reserve fund of the bank then bears to the paid-up capital stock thereof; and,
 - (c) payment shall not be required in greater amounts or at shorter intervals than ten per cent of the price every thirty days.
2. Notice of allotment shall be mailed to the shareholders at their last known post office address as shown by the record of the bank, and the directors shall in such notice fix a date not less than ninety days from the day on which the notice is mailed within which the allotment is to be accepted.
 3. Any of such allotted stock which is not accepted by a shareholder to whom the allotment has been made, within the time so fixed, or which he declines to accept, together with such shares as remain unallotted because of the provisions of this section that no fraction of a share can be allotted, may be offered for subscription to the public in such manner and on such terms as the directors prescribe.
 4. Any sums received in excess of the rate per share fixed by the directors under this section

in respect of fractions of shares offered for subscription to the public shall be rateably distributed to the respective shareholders from whose shares the fractions arose. 53 V., c. 31, s. 27. Am.

Clause (c) of the first sub-section is new. It applies the general rule in section 38 to these calls. Sub-sections 2 and 4 are also new, as is also the provision in sub-section 1 authorizing the directors to fix "terms" to the allotment, and that in sub-section 3 relating to fractions of shares.

It will be seen that when offering this stock to the shareholders a maximum premium is prescribed. When offered to the public the directors have full power to fix the rate. They cannot, however, in either case, offer it below par. If they should do so the purchasers would be liable to be called upon to pay the difference between the amount paid by them and the par value of their shares: *Ooregum Gold Mining Co. v. Roper*, [1892] A. C. 125; *Welton v. Saffery*, [1897] A. C. 299; *North West Electric Co. v. Walsh*, 29 S. C. R. 33 (1898). If, however, the stock had passed into the hands of a *bona fide* purchaser for value without notice of the irregularity he would not be liable to pay such difference: *McCracken v. McIntyre*, 1 S. C. Can. 479 (1877); *Burkinshaw v. Nicolls*, 3 App. Cas. 1004 (1878); *Parbury's Case*, [1896] 1 Ch. 100; *Bloomenthal v. Ford*, [1897] A. C. 156.

35. Reduction of capital.—The capital stock of the bank may be reduced by by-law passed by the shareholders at the annual general meeting, or at a special general meeting called for the purpose.

2. No such by-law shall come into operation or be of force or effect until a certificate approving thereof has been issued by the Treasury Board.

3. No such certificate shall be issued by the Treasury Board unless application therefor is made within three months from the time of the passing of the by-law, nor unless it appears to the satisfaction of the Board that—

(a) the shareholders voting for the by-law represent a majority in value of all the shares then issued by the bank; and

(b) a copy of the by-law, together with notice of intention to apply to the Treasury Board for the issue of a certificate approving thereof, has been published for at least four weeks in *The Canada Gazette*, and in one or more newspapers published in the place where the chief office of the bank is situate.

4. Nothing herein contained shall be construed to prevent the Treasury Board from refusing to issue the certificate if it thinks best so to do.

5. In addition to evidence of the passing of the by-law, and of the publication thereof in the manner in this section provided, statements showing—

(a) the amount of stock issued;

(b) the number of shareholders represented at the meeting at which the by-law passed;

(c) the amount of stock held by each such shareholder;

(d) the number of shareholders who voted for the by-law;

- (e) the amount of stock held by each of such last mentioned shareholders;
 - (f) the assets and liabilities of the bank in full; and,
 - (g) the reasons and causes why the reduction is sought; shall be laid before the Treasury Board at the time of the application for the issue of a certificate approving the by-law.
6. The passing of the by-law, and any reduction of the capital stock of the bank thereunder, shall not in any way diminish or interfere with the liability of the shareholders of the bank to the creditors thereof at the time of the issue of the certificate approving the by-law.
 7. If in any case legislation is sought to sanction any reduction of the capital stock of any bank, a copy of the by-law or resolution passed by the shareholders in regard thereto, together with statements similar to those by this section required to be laid before the Treasury Board, shall, at least one month prior to the introduction into Parliament of the bill relating to such reduction, be filed with the Minister.
 8. The capital shall not be reduced below the amount of two hundred and fifty thousand dollars of paid-up stock. 53 V., c. 31, s. 28.

Before 1890 a special Act of Parliament was required for reducing the stock of a bank. The reduction is made when the capital has been impaired by losses, and it is desired to pay dividends, as no dividends can be paid

which will impair the paid up capital: sec. 58; and while the capital is impaired all profits shall be applied to make it good: sec. 39.

This is one of the few things in the Act which require a special majority. To increase the stock a bare majority of the shares voting at the annual meeting or the special general meeting where it is brought up is sufficient: sec. 33. To reduce the stock is a more serious matter, hence the larger vote required. The Treasury Board may refuse a certificate even if the requirements of the section are complied with, but cannot grant a certificate without full compliance with the prescribed conditions.

Sub-section 8 provides that in no case shall the capital be reduced below \$250,000. This is only one-half the minimum of subscribed capital required for a new bank since 1890: secs. 10 and 13. It is the same amount as that required to be paid up before a new bank can obtain a certificate to begin business: sec. 13.

35A. Re-division of shares.—The capital stock of any bank heretofore incorporated which is at the date of the passing of this Act divided into shares of fifty dollars each may be re-divided into shares of one hundred dollars each, by by-law passed by the shareholders at any annual general meeting or at any special general meeting called for the purpose.

2. Each shareholder shall be entitled, on any re-division made in pursuance of the next preceding sub-section, to an allotment of one share of one hundred dollars for each two shares of fifty dollars each then held by him, and the bank may call in the existing certificates of stock, and issue new certificates in lieu thereof.
3. As soon as may be after such re-division the bank shall call for tenders for the purchase of

the share of persons who continue to hold respectively only one fifty dollar share by giving public notice for four weeks, and the advertisement shall state the total number of shares so offered; and a copy of such advertisement shall be mailed in the post office, registered and post paid, to the last known address of each of such shareholders at least twenty-one days before the last day fixed thereby for receipt of tenders, and the tenders shall be for two such fifty dollar shares or multiples thereof, and the highest tenderers shall be entitled, on payment of the amount tendered, to one one hundred dollar share for each two fifty dollar shares in respect of which they were the highest bidders.

4. The proceeds derived from the sale of the shares referred to in the next preceding subsection shall, without deduction for cost or charges, be distributed ratably among the former shareholders entitled thereto, and the payment of the amounts shall relieve the bank from all liability to such shareholders in respect of the share so sold.
5. Any of the original unsubscribed capital stock, or of the increased capital stock of a bank whose shareholders have passed a by-law under sub-section 1 of this section, shall when issued be allotted in shares of one hundred dollars each.
6. If, before the first day of July, nineteen hundred and thirteen, the shareholders of any such bank at an annual general meeting or at a

special general meeting called for the purpose, have approved of the division of the capital stock into shares of one hundred dollars each, the by-law referred to in sub-section 1 of this section may be passed by the directors.

This is an entirely new section. It will be observed that in drafting the present Act, the numbering of sections in R. S. C. c. 29 has been retained throughout. In some cases the new matter introduced has not been strictly germane to the sections to which it has been added. Where, as in the above section, it has introduced something entirely new, the practice has been followed of distinguishing the new sections by the addition of letters of the alphabet. See sections 56A, 84A, 131A, 131B, 140A, 146A, 146B, 147A, 147B, 147C.

The notice for call of tenders in sub-section 3 is called a public notice; but the insertion of the advertisement in the Canada Gazette required by section 2, sub-section 2, for public notices is dispensed with, the mailing of the notice to each shareholder interested being prescribed in lieu of such advertisement.

The capital stock of all the banks incorporated since 1890 has been divided into shares of \$100 each. Before that time the amounts varied, the amount for each bank being stated in its charter. It then required a special Act to authorize a change. For example, the Bank of Montreal reduced its shares from \$200 to \$100 under chapter 82 of 1903, and the Dominion Bank increased its shares from \$50 to \$100 under chapter 89 of 1910.

SHARES AND CALLS.

36. Shares personalty.—The shares of the capital stock of the bank shall be personal property.
53 V., c. 31, s. 29, s.-s. 1.

Shares in a bank would be personal property without any declaration to that effect in the Act: *Humble v.*

Mitchell, 11 A. & E. 205 (1839); C.C. Art. 387. They would not ordinarily be included in the expression "goods, wares, and merchandise": *Knight v. Barber*, 16 M. & W. 66 (1846); *Humble v. Mitchell*, *supra*; but they have been held to be "goods" within the English Order 50, R. 2, which gives the Court power to sell any "goods, wares or merchandise": *Evans v. Davies*, [1893] 2 Ch. 216. They are not "securities," and would not pass under a bequest of bonds, moneys, and securities: *Ogle v. Knipe*, L. R. 8 Eq. 434 (1869); *Collins v. Collins*, L. R. 12 Eq. 455 (1871); *Hudleston v. Gouldsbury*, 10 Beav. 547 (1847); but it has been held that with appropriate words in the context, they may be within the word "securities" in a will: *Re Rayner*, [1904] 1 Ch. 176. They are property, and are, properly speaking, choses in action: *Colonial Bank v. Whinney*, 11 A. C. 426 (1886); *Atty.-Gen. v. Montefiore*, 21 Q. B. D. 461 (1888). In the *Bank of Montreal v. Simpson*, 6 L. C. J. 1, and 14 Moore P. C. 417 (1861), it was held that bank shares under the old French law were an *immeuble fictif*, and a tutor could not sell them without observing the formalities for the sale of immovables by him. Under Art. 387 C. C. they are, like shares in all commercial and manufacturing companies, declared to be movables even when the companies own immovable property.

2. Books of subscription.—For the purpose of disposing of stock which may be offered for subscription to the public under section 34 of this Act, stock books may be opened at the chief office of the bank, or at such of its branches, or elsewhere, as the directors prescribe. 53 V., c. 31, s. 29. Am.

3. Each subscriber shall, at the time of subscription, give his post office address, and description, and these particulars shall appear in the stock book in connection with the name of the

subscriber and the number of shares subscribed for. New.

Sub-section 2 has been amended but the effect of the new sub-section is the same as the old. It lays down the same rule as to the disposition of any of the unsubscribed or increased capital stock which the existing shareholders may not take up, as is laid down for the provisional directors with respect to the original subscriptions by section 12, sub-sections 1 and 2, except that no notice is required to be given.

Sub-section 3 is a verbatim copy of sub-section 3 of section 12. It replaces a provision as to transfers, which is now embodied in section 43.

By section 34 any of the capital stock of the bank not subscribed for before the organization of the bank or of the increased stock of the bank shall first be allotted to the then shareholders *pro rata*. Any of such shares not accepted by the shareholders, together with the fractions of shares in case of increase, may be offered to the public, and the method is prescribed in these sub-sections.

When shares have been allotted under section 34 and a shareholder has signified his acceptance, the contract is complete and both parties are bound.

When stock books are opened under the present section it is the subscriber that makes the offer, and the allotment of the stock by the directors and notice to the subscriber makes the contract binding. Until this is done the subscriber may withdraw his application or cancel his subscription, unless it be under seal: *Pellatt's Case*, L. R. 2 Ch. 527 (1867); *Hebb's Case*, L. R. 4 Eq. 9 (1867); *Pentelow's Case*, L. R. 4 Ch. 178 (1869); *Nelson Coke Co. v. Pellatt*, 4 O. L. R. 481 (1902). A verbal withdrawal may be sufficient: *Mallory's Case*, 4 O. L. R. 552 (1902).

The word "allotment" is popularly used as to both these operations, but in quite a different sense, as pointed

out by Mr. Justice Duff in *Sovereign Bank v. McIntyre*, 44 S. C. R. at p. 173 *et seq.* (1910).

37. Notice of double liability.—There shall be printed in small pica type, or type of larger size on each page in the stock books upon which subscriptions are recorded and on every document constituting or authorizing a subscription, on a part of the page and document, respectively, which may be readily seen by the person recording the subscription, or by the person signing the document, a copy of section 125 of this Act. New.

This section is a verbatim copy of section 12, subsection 4, and is intended to notify every subscriber of the double liability. The old section related to the payment of shares and the cancellation of subscriptions; this ground is now covered by sections 12, 38 and 40.

38. Calls on shares.—The directors may make such calls of money from the several shareholders for the time being, upon the shares subscribed for by them respectively, as they find necessary.

2. Any number of calls may be made by one resolution.
3. Such calls shall be payable at intervals of not less than thirty days.
4. Notice of such calls shall be given to the shareholders.
5. No such call shall exceed ten per cent of each share subscribed. 53 V., c. 31, s. 31. Am.

This section has been recast and materially changed. It was formerly held to mean that each call required a

separate resolution, and that there should be an interval of at least thirty days between the resolutions. Now the whole amount may be called up by one resolution, provided there be an interval of not less than thirty days between the days of payment of the several calls.

The calls are to be “of money.” The corresponding expression in the English and Canadian Companies’ Acts is that they are to be paid “in cash.” In construing this latter term the Courts have upheld honest transactions in which no cash has passed; they have treated payment in cash as equivalent to payment within the meaning of a plea of payment as distinguished from set-off, or accord and satisfaction: *Fothergill’s Case*, L. R. 8 Ch. 270 (1873); *Spargo’s Case*, *ibid.* 407 (1873). The latter case was approved and followed by the Privy Council in *Larocque v. Beauchemin*, [1897] A. C. 358, an appeal from the Province of Quebec, where the statute required payment to be made “in cash.” In a case in the House of Lords, *Ooregum Gold Mining Co. v. Roper*, [1892] A. C., Lord Watson says, at p. 136:—“It has been decided that under the Act of 1862 shares may be lawfully issued as fully paid up, for considerations which the company has agreed to accept as representing in money’s worth the nominal value of the shares. I do not think any other decision could have been given in the case of a genuine transaction of that nature, where the consideration was the substantial equivalent of full payment of the shares in cash. The possible objection to such an arrangement is that the company may overestimate the value of the consideration, and, therefore, receive less than nominal value for its shares. The Court would doubtless refuse effect to a colourable transaction, entered into for the purpose or with the obvious result of enabling the company to issue its shares at a discount; but it has been ruled that, so long as the company honestly regards the consideration given as fairly representing the nominal value of the shares in cash, its estimate ought not to be critically examined.”

For illustrations of colourable transactions where shareholders were held liable, see *Union Bank v. Morris*, and *Union Bank v. Code*, 27 Ont. A. R. 396 (1900); *Welton v. Saffery*, [1897] A. C. at p. 329; *North Sydney Co. v. Higgins*, [1899] A. C. at p. 272.

A statement of an account in which there would be a balance payable to the shareholder in cash would be sufficient: *Coates' Case*, L. R. 17 Eq. 169 (1873); *Adamson's Case*, L. R. 18 Eq. 670 (1874); *Barrow-in-Furness Co.*, 14 Ch. D. 400 (1880). But where the original subscription is based upon an agreement that the stock shall be paid for in property or services, such an agreement is not binding: *National Insurance Co. v. Hatton*, 24 L. C. J. 26 (1879); *Compagnie de Navigation v. Christin*, 4 L. N. 162 (1880); *Smart v. Bowmanville Machine Co.*, 25 U. C. C. P. 503 (1875); *Pagin and Gill's Case*, 6 Ch. D. 681 (1877); *Burkinshaw v. Nicolls*, 3 A. C. 1004 (1878); *White's Case*, 12 Ch. D. 511 (1879); *Barrow's Case*, 14 Ch. D. 432 (1880).

A call can be made only at a meeting of directors duly called at which a quorum is present: *Bank of Liverpool v. Bigelow*, 12 N. S. (3 R. & C.) 236 (1878); *Ontario Marine Insurance Co. v. Ireland*, 5 U. C. C. P. 139 (1855). It may be made by resolution. It must fix the time and place for payment: *In re Cawley Co.*, 42 Ch. D. at p. 236 (1889); *Johnson v. Lyttle's Iron Agency*, 5 Ch. D. 694 (1877); *Armstrong v. Merchants' Mantle Co.*, 32 O. R. 387 (1900). It is made in point of time when the resolution is passed, and not when notice of it is given to the shareholder: *Reg. v. Londonderry Ry. Co.*, 13 Q. B. 998 (1849); R. S. C. chap. 79, sec. 59. Where directors passed a resolution for a call, but left the date of payment in blank, and some time afterwards a resolution was passed fixing the date of payment, it was held that no proper call was made until the date of the second resolution: *In re Cawley Co.*, 42 Ch. D. 209 (1889).

“Not less than thirty days” and “at least thirty days” mean thirty clear days, that is, exclusive of both

the first and last days: *Reg. v. Salop*, 8 A. & E. 173 (1838); *Mitchell v. Forster*, 12 A. & E. 472 (1840); *Young v. Higgon*, 6 M. & W. 49 (1840); *Chambers v. Smith*, 12 M. & W. 2 (1843); *R. v. Turner*, 3 Cr. App. R. 103 (1909).

Until the late revision the Act did not state how notice of calls should be given. This has been remedied by the enactment of sub-section 4 of section 2, which provides that it shall be by registered letter mailed at least thirty days prior to the day on which the call is payable.

There is nothing in the Act to prevent the directors agreeing with subscribers or shareholders that shares shall be paid up either more or less rapidly than indicated in this section. See *Farmers Bank v. Blow*, 18 O. L. R. 530 (1909).

39. Capital lost to be called for.—If any part of the paid-up capital is lost the directors shall, if all the subscribed stock is not paid up, forthwith make calls upon the shareholders to an amount equivalent to the loss: Provided that all net profits shall be applied to make good such loss.

2. Any such loss of capital and the calls, if any, made in respect thereof, shall be mentioned in the next return made by the bank to the Minister. 53 V., c. 31, s. 48.

These calls would not enable the directors to declare dividends before the net profits equalled such loss: section 58. Dividends could only be paid before that time by reducing the capital as provided by section 35.

This is the only section between seven and forty-five which is applicable to the Bank of British North America: sec. 6.

40. Recovery of calls and instalments.—In case of the non-payment of any call, or instalment under an accepted allotment, the directors may, in the corporate name of the bank, sue for, recover, collect and get in any such call or instalment, or may cause and declare the shares in respect of which any such default is made to be forfeited to the bank. 53 V., c. 31, s. 32. Am.

The words “ or instalment under an accepted allotment ” are new, and in consequence of their insertion the words “ or instalment ” have been added, and “ default ” has taken the place of “ call.” The changes give the directors express power not only to sue for calls or forfeit shares for non-payment of calls, but to take these steps in any case where the money is payable by instalments. This would cover the cases where the provisional directors may have made the money payable by instalments under section 12, or where shares have been offered to the public under section 34.

It is doubtful whether the directors, when offering stock to the then shareholders under section 34, could impose any more onerous terms as to payment than those prescribed by section 38 for calls; but they would not be under the same restrictions or limitations when offering stock to the public toward whom they are not under the same obligations.

The directors may sue not only for the amount of the calls or instalments, but also for the penalty of ten per cent provided by the next section.

Instead of suing, the directors have the option of declaring the stock forfeited. This right would apply not only to stock offered by themselves, but also to original subscriptions of stock during the term of office of the provisional directors. If, however, the bank has

threatened to sue, it cannot forfeit the stock without a notice to the shareholder that it intends to do so: *Robertson v. Banque d'Hochelaga*, 4 L. N. 314 (1881).

Forfeiture being a penal provision, its operation will be kept strictly within the limits prescribed by the Act, and what in ordinary cases might be considered trifling irregularities may suffice to have it declared invalid and set aside: *Clarke v. Hart*, 6 H. L. C. 633 (1858); *Johnson v. Lyttle's Iron Agency*, 5 Ch. D. 687 (1877); *In re New Chile Gold Mining Co.*, 45 Ch. D. 598 (1890); *Armstrong v. Merchants' Mantle Co.*, 32 O. R. 387 (1900).

The procedure for carrying out such forfeiture is laid down in the next section.

41. Penalty and forfeiture of shares. — If any shareholder refuses or neglects to pay an instalment or call upon his shares of the capital stock at the time appointed therefor, such shareholder shall incur a penalty, to the use of the bank, of a sum of money equal to ten per cent of the amount of such shares.

2. If the directors declare any shares to be forfeited to the bank they shall, within six months thereafter, without any previous formality, other than public notice published for at least four weeks, of their intention so to do, sell at public auction the said shares, or so many of the said shares as shall, after deducting the reasonable expenses of the sale, yield a sum of money sufficient to pay the unpaid instalments or calls due on the remainder of the said shares, and the amount of penalties incurred upon the whole.

3. The president, a vice-president, or the general manager of the bank shall execute the transfer to the purchaser of the shares so sold; and

such transfer shall be as valid and effectual in law as if it had been executed by the original holder of the shares thereby transferred.

4. The directors, or the shareholders at a general meeting may, notwithstanding anything in this section contained, remit, either in whole or in part, and conditionally or unconditionally, any forfeiture or penalty incurred by the non-payment of instalments or calls as aforesaid. 53 V., c. 31, s. 33. Am.

The penalty of ten per cent provided by this section is incurred whether the directors exercise the option of suing the delinquent shareholder, or of declaring the shares to be forfeited as provided in section 40. It would appear as if this penalty was provided in lieu of interest on such calls. The Companies' Act, R. S. C. c. 79, provides for interest on calls at the rate of six per cent., but no penalty: secs. 60 and 140. In *Hughes v. La Compagnie de Villas*, M. L. R. 5 S. C. 129 (1889), it was held that interest could not be collected on calls under a Quebec Statute which did not mention interest.

To render a shareholder liable to the penalty of ten per cent, or to the forfeiture of his shares, the Act must have been strictly complied with. While the acts of directors *de facto* in dealing with outsiders would be valid and would bind the bank in favour of parties acting in good faith, yet irregularities in the election of directors or violation of the by-laws might be set up by shareholders as an answer to a call or forfeiture: *Garden Gully Co. v. McLister*, 1 App. Cas. 39 (1875).

The business of a company was to be conducted by not less than five nor more than seven directors, and power was given to fix a quorum. A quorum of four was fixed, but this was done irregularly; these four made a call and afterwards declared the stock forfeited for non-payment. It was held that the call and forfeiture were

invalid: *In re Alma Spinning Co., Bottomley's Case*, 16 Ch. D. 681 (1881).

Where the bank notified a shareholder that in default of payment they would sue, it was held that they had no right to forfeit his stock without further notice: *Robertson v. Banque d'Hochelaga*, 4 L. N. 314 (1881).

The secretary sent a notice that unless a call was paid with interest from the day it was made it would be forfeited. Interest actually only ran from the date of payment. The forfeiture was consequently set aside: *Johnson v. Lytle's Iron Agency*, 5 Ch. D. 687 (1877).

When the rules required a notice after default in payment, and this was not given, the forfeiture was declared invalid: *In re New Chile Co.*, 45 Ch. D. 598 (1890).

The Act contemplates that all shares shall be paid in full, or that a liability shall remain for the amount unpaid. No authority is given to issue shares at a discount; but any not originally subscribed for may be issued at a premium by the directors after organization, or in case of the increase of the capital stock: sec. 34. If issued at a discount or as fully paid up when not actually paid, a shareholder would be liable to creditors, or to a liquidator in case of winding up, for the amount unpaid. A person, however, who would afterwards accept a transfer of such stock in good faith and in ignorance of the irregularity would not be liable: *McCracken v. McIntyre*, 1 S. C. Can. 479 (1877); *Neelon v. Thorold*, 22 S. C. Can. 390 (1893); *N. W. Electric v. Walsh*, 29 S. C. Can. at p. 50 (1898); *In re The Ontario Express Co.*, 21 Ont. A. R. 646 (1894).

Where a person lent money to a company and was to receive fully paid-up shares, which he accepted in good faith, believing them to be paid up, the liquidator was held to be estopped, and his name was removed from the list of contributories: *Bloomenthal v. Ford*, [1897] A. C. 156.

- 42. Recovery by action.**—In any action brought to recover any money due on any instalment or call, it shall not be necessary to set forth the special matter in the declaration or statement of claim, but it shall be sufficient to allege that the defendant is the holder of one share or more, as the case may be, in the capital stock of the bank, and that he is indebted to the bank for instalments or calls upon such share or shares, in the sum to which the instalments or calls amount, as the case may be, stating the amount and number of the instalments or calls.
2. It shall not be necessary in any such action to prove the appointment of the directors. 53 V. c. 31, s. 34.

The words “instalment” and “instalments” are new. This is another instance of the Dominion Parliament legislating on a subject over which exclusive jurisdiction is given to the provinces by section 92 of the B. N. A. Act, as procedure in civil matters in provincial Courts is so assigned by sub-section 14. It is done under the principle laid down in *Cushing v. Dupuy*, 5 App. Cas. 409 (1880); *Tennant v. Union Bank*, [1894] A. C. 31, and *Atty.-Gen. for Ontario v. Atty.-Gen. for the Dominion*, [1896] A. C. at p. 366.

TRANSFER AND TRANSMISSION OF SHARES.

- 43.** No transfer of the shares of the capital stock of the bank shall be valid unless—
- (a) made, registered and accepted by the person to whom the transfer is made, or by his attorney appointed in writing, in a book or books kept for that purpose; and,
 - (b) The person making the transfer has, if required by the bank, previously discharged all

his debts or liabilities to the bank which exceed in amount the remaining stock, if any, belonging to such person, valued at the then current rate.

2. The post office address and description of the transferee shall be entered in such book.
3. No fractional part of a share, or less than a whole share shall be transferable. 53 V., c. 31, ss. 29 and 35. Am.

Formerly the directors had the right under section 36, sub-section 3, to prescribe the forms and make rules and regulations for the transfer and acceptance of shares, but that sub-section was omitted at the late revision. Subject to what is contained in this section, the directors may still under section 29 (*b*) perform these duties. No form of transfer is prescribed in the Act.

Clause (*b*) is a method of enforcing the lien which section 77 gives to a bank on the shares of its debtor.

A sale of shares, like that of other property, is complete on the agreement of the parties. The requirements of the section as to registration of the transfer, etc., affect only the relations between the shareholder and the bank: *Bessette v. Brien*, Q. R. 21 K. B. 132 (1911).

The parties to such transfers must be persons capable of contracting. These transfers may be set aside on the same grounds as other contracts, as infancy, incapacity, fraud, etc. Thus, when a father executed a transfer of certain shares in a bank to his minor son, and purported to accept the transfer on behalf of his son, and the bank acted upon the transfer and paid him dividends, it was held that the transfer was void for want of legal acceptance: *Walsh v. Union Bank*, 5 Q. L. R. 289 (1879).

The Ontario Letters Patent Act contained a provision as to the registration of transfers nearly in the same terms as this section. A company incorporated under it.

had issued a certificate to a registered owner with an indorsement that the shares were transferable only on the surrender of the certificate. He sold the shares and made over the certificate to the purchaser. He sold them to another purchaser who bought in good faith and had the transfer duly made in the books of the company. It was held that the first purchaser had lost his claim on the stock by not having his transfer registered, and that the company could waive the production of the certificate: *Smith v. Walkerville Iron Co.*, 23 Ont. A. R. 95 (1896). *Williams v. Colonial Bank*, 38 Ch. D. 388 (1888), was relied upon as an authority.

On account of the double liability which attaches to bank stock, transferees often seek to escape responsibility, in case of insolvency, by claiming that the transfers to them or their predecessors are invalid for want of compliance with this section. In the case of the Central Bank, where the seller signed a transfer in blank, subject, by a marginal note, to the order of a broker, and the purchaser designated by the broker signed the acceptance, it was held to be a sufficient compliance with the Act: *Re Central Bank, Baines' Case*, 16 Ont. A. R. 237 (1889). In the same matter, where a purchaser did not sign the acceptance, but dealt with the shares by selling and signing the transfer of them to another person, it was held that the latter was estopped from setting up the irregularity, and was properly placed on the list of contributories: *Re Central Bank, Nasmith's Case*, 16 O. R. 293 (1888); affirmed in appeal, 18 Ont. A. R. 209 (1891). Also, that after a winding-up order has been made, it is too late for a shareholder who has accepted the transfer of certain shares to set up irregularities in previous transfers of these shares: *Re Central Bank, Home Savings and Loan Co.'s Case*, 18 Ont. A. R. 489 (1891).

Where there was no valid transfer of the shares under the Act, but defendant had paid calls, given a receipt

for a dividend and combined with others in appointing a proxy, he was held to be a shareholder and liable for calls: *Bank of Liverpool v. Bigelow*, 12 N. S. (3 R. & C.) 236 (1878).

If a transfer be made in blank the transferee has implied power to fill up the blanks: *In re Tahiti Cotton Co.*, L. R. 17 Eq. 273 (1873).

Where a person in good faith induces a bank to transfer shares under a power of attorney, which is really forged, he is liable to indemnify the bank against the claim of the shareholder whose stock has been transferred: *Starkey v. Bank of England*, [1903] A. C. 114; *Sheffield Corporation v. Barclay*, [1906] A. C. 392; *Bank of England v. Cutler*, [1908] 2 K. B. 208.

“ Debts or liabilities to the bank ” would include not only all sums actually due and payable, and those maturing but not due, when the shareholder is the principal debtor, but also all sums for which he would be liable only secondarily or conditionally as endorser, surety or the like. It would also include stock not yet called up, so that the bank might refuse to register a transfer of stock not fully called and paid up, if it was not satisfied to accept the purchaser for the amount; and might apply to a transfer of fully paid-up shares, where the transferrer was liable on other shares not fully paid up: *Re McKain & Birkbeck Co.*, 7 O. L. R. 241 (1904).

Under the Act of 1871, it was only debts due to the bank that the shareholder could be obliged to pay, if so required, in order to have his transfer allowed. Under that Act it was held that the bank was obliged to allow a transfer of partly paid-up stock: *Smith v. Bank of Nova Scotia*, 8 S. C. Can. 558 (1883). A bank has a lien on the stock held in it by a member of a firm for a debt due to it by such firm: *In re Chinic*, 14 Q. L. R. 289 (1888).

When a bank gives a statement to an intending purchaser of the amount of its lien on certain shares, but

before the transfer of the stock other liabilities accrue, it may hold the stock until the latter are paid: *Cook v. Royal Canadian Bank*, 20 Grant 1 (1873).

See section 77 as to a like claim on dividends and as to the mode of realizing the lien on such stock.

In *Smith v. Bank of Nova Scotia*, 8 S. C. Can. 558 (1883), it was held that a resolution adopted at a meeting of shareholders, authorizing a loan on behalf of the bank and agreeing to hold their stock until this loan was fully paid, did not bind a shareholder who was not at the meeting, although he joined in a bond as surety for the loan, and the bank had no right to refuse to transfer his stock. In *Barss v. Bank of Nova Scotia*, 18 N. S. (6 R. & G. 254 (1885), a shareholder who was present at the meeting in question was held entitled to have the transfer of his stock registered.

If a bank should, without good cause, refuse to allow a transfer to be registered, it would be liable for the damages sustained by such refusal. The bank is entitled to a reasonable time to decide: *In re Ottos Kopje Diamond Mines*, [1893] 1 Ch. 618.

It was held in *Re Good and Jacob Y. Shantz Son & Co.*, 21 O. L. R. 154 (1910), and 23 O. L. R. 544 (1911), that a company incorporated under the Dominion Companies Act had no power to pass a by-law requiring the assent of the directors to the transfer of fully paid-up stock. The company sought to justify the by-law under section 80, which authorized the passing of by-laws "to regulate the transfer of stock." See also *Re Panton and the Cramp Steel Co.*, 9 O. L. R. 3 (1904).

4. **Provincial share registers.**—The bank may open and maintain in any province in Canada in which it has resident shareholders and in which it has one or more branches or agencies, a share-registry office, to be designated by the

directors, at which the shares of the shareholders, resident within the province, shall be registered and at which, and not elsewhere, except as hereinafter provided, such shares may be validly transferred.

5. Shares of persons who are not resident in Canada or in any province in which there is a branch or agency of the bank may be registered and shall be transferable at the chief office of the bank or elsewhere, as the directors may designate.
6. Whenever there is a change in the ownership of shares, and the new shareholder resides in a province other than that in which the former shareholder resided, and whenever there is a change in the residence of a shareholder from one province to another, or whenever a shareholder residing outside of Canada becomes a resident of a province in Canada, the registration of the shares shall be changed to the registry of the province in which the shareholder has his residence, if there is a branch or agency of the bank in that province, and if a share-registry has been opened in that province, and the shares of such shareholder shall thereafter be transferable at such registry and not elsewhere, except as herein provided.
7. For the purposes of this section, a shareholder shall be deemed to be resident in the province in which he has, according to the books of the bank, his post office address.

8. The directors shall appoint such agents for the purposes of this section as they deem necessary. 53 V., c. 31, ss. 29 and 35. Am.

Sub-sections 4 to 7, inclusive, are new. Previous to the late revision, section 36, sub-section 3, provided that shares should be transferable at the chief place of business of the bank, and at such other places as the directors had opened books of subscription.

These new sections were added in order that shareholders might have their shares registered in their respective provinces, and thereby escape paying a succession tax to two provinces. As the bill passed the House of Commons the establishment of provincial registers was compulsory, in the Senate it was made optional with the bank and so adopted. It is not likely that in its present form it will go far to attain the desired end.

Sub-section 5 would appear to be inequitable in authorizing the directors to select the place of registry for the shareholders therein named, unless they resort to the expedient of giving a fictitious post office address: s.-s. 7.

Where a bank has its head office in one province and has established share-registry offices elsewhere, the situs of the shares registered at these latter may be a question not easily determined. It is possible that for different purposes the answers may be very different. The authority of the old maxim *mobilia sequuntur personam* has been very much shaken by modern decisions. The question of situs will be constantly arising with reference to local assessment or taxation, or probate or administration or succession duty.

The jurisdiction of the provinces is given by the following sub-sections of section 92 of the British North America Act:—" (2) Direct taxation within the province in order to the raising of a revenue for provincial purposes," and " (16) Property and civil rights in the province."

The general rule is that shares are situate at the head office, and the leading case in support of this doctrine is *Attorney-General v. Higgins*, 2 H. & N. 339 (1857). In that case a domiciled Englishman owned shares in Scotch railway companies. On his death his will was proved in England, and under a statute similar to the transmission sections of the Bank Act, a copy of the English probate with the proper declaration was given to the secretaries of these companies, and the names of the executors entered on the register of shareholders. It was held that these shares were situate in Scotland and not in England. It was not a question between two offices of the company or two registers, but between the domicile of the testator and the head office of the company. The ground of the decision is stated by Martin, B., as follows (p. 350): "The evidence of title to these shares is the register of shareholders, and that being in Scotland this property is located in Scotland."

In *Nickle v. Douglas*, 35 U. C. Q. B. 126 (1874), where the city of Kingston sought to tax the plaintiff on his shares in the Merchants Bank, Montreal, Wilson, J., for the Court said (p. 145): "In our opinion the plaintiff's stock is owned by him, so far as the Assessment Act is concerned, at the head or chief place of business of the bank in Montreal. The fact that it may be transferred at a branch office of the company, if the directors so appoint, is a provision made for the convenience of the shareholders, and does not change the locality of the stock itself." Here there was no question between different offices; the sole question was whether these shares were "owned out of the province of Ontario," and it did not appear in the case that the bank even had an office in the province.

In *Hughes v. Rees*, 5 O. R. 654 (1884), Ferguson, J., stated (p. 666), that he was of opinion that the bank stock there in question was situate in Ontario where the head office was, although the bank had, for convenience, made provision for making transfers of the stock in

Montreal. This, however, was not necessary for the decision of this case. He held the transaction void, and he would have done so even if he had considered that the stock was situate in Montreal.

A question closely analogous to that now being considered arose in *Re Clark*, [1904] 1 Ch. 294. Clark was domiciled in England, and held shares in South African companies organized under the laws of the Transvaal and Orange Free State, with their head offices in South Africa, but with offices in London where a duplicate share register was kept. Transfers could be made either in South Africa or in England on the production of certificates which Clark at the time of his death had in England. By his will he bequeathed his property in England to certain persons called the "home trustees," and his property in South Africa to others called the "foreign trustees." On an application for the construction of the will, Farwell, J., held that while the transfer could be made equally effectually in South Africa or in England, the possession in England of the certificates which were essential to complete the title to the shares made them pass under the gift of the property situated in England, and not under the gift of property in South Africa.

If the Clark shares had been stock in a Canadian bank it could not be said that their transfer could be made equally effective in either place. Before they could be transferred at all it would be necessary for the executors to make a declaration of transmission under section 47, and leave it with the manager, or other agent of the bank who had charge of the register upon which the shares in question were, together with the probate of the will under section 50, whereupon the proper officer would enter the names of the executors or trustees upon the register. Any dispute as to who were the proper trustees of the shares in question would have to be settled by the Court having jurisdiction where the shares were registered.

In *Atty.-Gen. v. Newman*, 1 O. L. R. 511 (1901), it was held by the Court of Appeal that payment of succession duty was based on administration, and that non-negotiable bank deposit receipts payable at an Ontario bank, held by a foreigner at the time of his death, were subject to Ontario succession duty.

In *Woodruff v. Atty.-Gen.*, [1908] A. C. 508, the Privy Council decided that it was *ultra vires* the Legislature of Ontario to tax property not within the province; that securities in New York which the testator, domiciled in Ontario, had transferred in his lifetime with intent that the transfers should only take effect after his death, were not subject to Ontario succession duty.

In *Winans v. Atty.-Gen.*, [1910] A. C. 27, it was decided by the House of Lords, following *Blackwood v. Reg.*, 8 App. Cas. 82 (1882), that negotiable foreign bonds payable to bearer when physically situate in England at the death of the owner were liable to estate duty, even though the deceased was a foreigner domiciled abroad. It may be noted that succession duty in Ontario resembles English probate or estate duty rather than English succession duty: *Atty.-Gen. v. Newman*, *supra*, at p. 515.

In *Rex v. Lovitt*, [1912] A. C. 212, a Nova Scotian had deposited money in the branch of the Bank of British North America in St. John, N.B. On his death ancillary probate was taken out in St. John. The New Brunswick Act made all property situate in the province, whether the deceased was domiciled there or not, subject to duty. The Privy Council upheld the claim of the province.

44. List of transfers.—A list of all transfers of shares registered each day in the books of the bank at the respective places where transfers are authorized, showing in each case the parties to such transfers and the number of shares transferred, shall be made up at the end of each day.

2. Such lists shall be kept at the said respective places for the inspection of the shareholders.
53 V., c. 31, s. 36. Am.

This section has been amended to agree with the changes in section 43, establishing provincial registry offices. Formerly the list was kept only at the chief office.

45. Requirements for valid transfer.—All sales or transfers of shares, and all contracts and agreements in respect thereof, hereafter made or purporting to be made, shall be null and void, unless the person making the sale or transfer, or the person in whose name or behalf the sale or transfer is made, at the time of the sale or transfer,—

(a) is the registered owner in the books of the bank of the share or shares so sold or transferred, or intended or purporting to be sold or transferred; or,

(b) has the registered owner's assent to the sale.

2. The distinguishing number or numbers, if any, of such share or shares shall be designated in the contract of agreement of sale or transfer.
3. Notwithstanding anything in this section contained, the rights and remedies under any contract of sale, which does not comply with the conditions and requirements in this section mentioned, of any purchaser who has no knowledge of such non-compliance, are hereby saved. 53 V., c. 31, s. 37.

This section was first inserted in the Act of 1890, and was designed to prevent gambling in bank shares, or engaging in transactions which are really betting on the rise or fall of the stock in the market; but like similar legislation in other countries it has not accomplished the desired object.

It is the only section of the Act between thirty-nine and fifty-seven which applies to the Bank of British North America: sec. 6.

The practice of numbering their shares is optional with Canadian banks, but has not been adopted by them.

The section as originally enacted in 1890 contained a clause making non-compliance an offence against the Act. This clause is section 133 of the present Act.

When the transferrer has as many shares as are mentioned or more, but the numbers do not correspond, the transfer is not necessarily void; the figures might afterwards be rectified: *In re International Contract Co.*, L. R. 7 Ch. 485 (1872).

46. Sale under execution.—When any share of the capital stock has been sold under a writ of execution, the officer by whom the writ was executed shall, within thirty days after the sale, leave with the bank an attested copy of the writ, with the certificate of such officer endorsed thereon, certifying to whom the sale has been made.

2. The president, a vice-president or the general manager of the bank shall execute the transfer of the share so sold to the purchaser, but not until after all debts and liabilities to the bank of the holder of the share, and all liens in favour of the bank existing thereon, have been discharged as by this Act provided.

3. Such transfer shall be to all intents and purposes as valid and effectual in law as if it had been executed by the holder of the said share.
53 V., c. 31, s. 38. Am.

The only change in this sub-section is the substitution in sub-section 2 of the words, " a vice-president or the general manager " for the old words " vice-president, manager or cashier."

The Act does not make any provision as to the seizure and sale of bank stock. That is left to the provincial courts and their procedure. It simply recognizes the sale and provides for the carrying out of the transfer to the purchaser. The principle is analogous to the provisions of the Railway Act which permit the sale of a Dominion railway in certain cases and provide for its being vested in the purchaser and for its subsequent operation: R. S. C. c. 37, sec. 299.

The Act of 1871 named the sheriff as the officer who might sell bank stock under a writ of execution. *In re Bank of Ontario*, 44 U. C. Q. B. 247 (1879), a sale by a bailiff in Montreal was held to have the same effect as a sale by the sheriff, and the sale was valid although the bank had its head office in Ontario, and only a branch office with no stock register in Montreal.

In the Province of Quebec bank shares cannot be seized by means of *saisie arret* (garnishment), but should be seized conformably to Art. 566 of the Code of Procedure (Art. 642 of the new Code): *Hudon v Banque du Peuple*, 7 R. L. 229 (1875).

47. **Transmission of shares.** — If the interest in any share in the capital stock of any bank is transmitted by or in consequence of—

(a) the death, lunacy, bankruptcy, or insolvency of any shareholder; or,

- (b) the marriage of a female shareholder; or,
 - (c) any lawful means, other than a transfer according to the provisions of this Act;
the transmission shall be authenticated by a declaration in writing, as hereinafter mentioned, or in such other manner as the directors of the bank require.
2. Every such declaration shall distinctly state the manner in which and the person to whom the share has been transmitted, and shall give his post office address and description, and such person shall make and sign the declaration.
 3. The person making and signing the declaration shall acknowledge the same before a judge of a court of record, or before the mayor, provost or chief magistrate of a city, town, borough or other place, or before a notary public, or a commissioner for taking affidavits, where the same is made and signed.
 4. Every declaration so signed and acknowledged shall be left with the general manager, or other officer or agent of the bank, who shall thereupon enter the name of the person entitled under the transmission in the register of shareholders.
 5. Until the transmission has been so authenticated, no person claiming by virtue thereof shall be entitled to participate in the profits of the bank, or to vote in respect of any such share of the capital stock. 53 V., c. 31, s. 39. Am.

The word “ lunacy ” in clause (a) is new, as also the words “ and shall give his post office address and description ” in sub-section 2; and the words “ or a commissioner for taking affidavits ” in sub-section 3.

The word “ transfer ” is used in the Act, when the interest in the stock passes as the result of the act of the parties; the word “ transmission ” when it passes by the operation of the law. The provisions of section 43 as to the previous discharge of indebtedness do not apply to a case of transmission, and a bank cannot refuse to register the transmission on the ground of indebtedness or lien: *In re Bentham Mills Spinning Co.*, 11 Ch. D. 900 (1878). The person to whom the shares are transmitted takes them in the same condition and subject to the same liabilities, if any, as existed while they were in the hands of the person from whom they are transmitted.

A transmission, in order to be of the same nature as a transmission by death, lunacy, bankruptcy, insolvency, or marriage, must be a transmission by operation of law, unconnected with any direct act of the party to whom the property is transmitted, and a transmission to a purchaser at a sale by licitation is not such a transmission: *Chasteauneuf v. Capeyron*, 7 App. Cas. 127 (1881).

If the directors require the transmission to be authenticated in some other manner than is set out in this and the three following sections, any rules they make should be reasonable and not more onerous than those prescribed by the Act.

Although sub-section 4 states that where the declaration is left with the general manager or other officer or agent of the bank, he shall thereupon enter the name of the person entitled under the transmission in the register, the succeeding sections show that it is only when the declaration is accompanied by the documents and evidence there mentioned, or when these latter are furnished to the bank, that the person is entitled to have his name

so entered. See sections 48 and 50. In the case of the death of a shareholder, and the production of his or her will, the directors may waive a declaration: sec. 51.

Until such declaration is made, and such documents and evidence furnished, the person entitled to the transmitted shares would be debarred, not only from drawing dividends or voting on these shares, but also from transferring or dealing with them, except in the case mentioned in the preceding paragraph.

Transmission by the marriage of a female shareholder is further dealt with by section 48; and transmission by death by sections 50 and 51; there is nothing outside the present section relating to transmission by lunacy, or the bankruptcy or insolvency of a shareholder.

While there is no Dominion Act relating to this subject, the section would apply to an abandonment of property in Quebec under Chapter XXXI. of the Code of Civil Procedure (Arts. 853 *et seq.*) and to the curator appointed thereto, and to assignments by insolvents under 10 Edw. VII. chap. 64, and the assignees thereunder, and to assignees under similar Acts of the other provinces.

It would also apply to assignees under general insolvency Acts in other countries. These have always been accorded full recognition in the province of Quebec, which also recognizes foreign executors and administrators as more fully set forth under section 51. While the law of England and those provinces which derived their laws from England have not fully recognized the latter, they have recognized foreign assignees, curators and trustees under general bankruptcy or insolvency Acts. The law of England on the point is stated as follows in Westlake's *International Law* (3rd ed.), at s. 134: "Curators, syndics and others who, under the law of a country where a debtor is domiciled, are entitled to administer his property on behalf of his creditors, are entitled as such to his chattels personal and choses in action in England."

Section 49 prescribes how the declaration must be authenticated if made in a foreign country.

48. Transmission by marriage.—If the transmission of any share of the capital stock has taken place by virtue of the marriage of a female shareholder, the declaration shall be accompanied by a copy of the register of such marriage, or other particulars of the celebration thereof, and shall declare the identity of the wife with the holder of such share, and shall be made and signed by such female shareholder and her husband.

2. The declaration may include a statement to the effect that the share transmitted is the separate property and under the sole control of the wife, and that she may, without requiring the consent or authority of her husband, receive and grant receipts for the dividends and profits accruing in respect thereof, and dispose of and transfer the share itself.
 3. The declaration shall be binding upon the bank and persons making the same, until the said persons see fit to revoke it by a written notice to the bank to that effect.
 4. The omission of a statement in any such declaration that the wife making the declaration is duly authorized by her husband to make the same shall not invalidate the declaration.
- 53 V., c. 31, s. 40.

Where the marriage domicile of the female shareholder is in a province or country where by law she has the exclusive control of her property as if she had

remained single, the declaration is necessary only for the purpose of keeping the record of her stock under her married name. If, however, the marriage domicile should be in the province of Quebec, the shares, being personal or movable property, would, in the absence of a notarial ante-nuptial contract of marriage, fall into the community of property and be subject to the sole control of the husband: C. C. Art. 1272. In case there is a marriage contract, it will probably make provision both as to the capital of the stock and as to the dividends. Even if the husband became by law entitled to the stock and the dividends a declaration in the terms of sub-section 2 would probably be held to be equivalent to a power of attorney to enable the wife to receive dividends or even to transfer the stock until the bank received a revocation under sub-section 3.

A similar rule would apply when the marriage domicile was in a country where by marriage the shares would become the property of the husband or come under his control.

See the next section as to the authentication of a declaration made in a foreign country.

49. Authentication of papers. — Every such declaration and instrument as are by the last two preceding sections required to perfect the transmission of a share in the bank shall, if made in any country other than Canada, the United Kingdom or a British colony,—

(a) be further authenticated by the clerk of a court of record under the seal of the court, or by the British consul or vice-consul, or other accredited representative of His Majesty's Government in the country where the declaration or instrument is made; or,

(b) be made directly before such British consul, vice-consul or other accredited representative.

2. The directors, general manager or other officer or agent of the bank may require corroborative evidence of any fact alleged in any such declaration. 53 V., c. 31, s. 39. Am.

50. Transmission by will or intestacy. — If the transmission has taken place by virtue of any testamentary instrument, or by intestacy, the probate of the will, or the letters of administration, or act of curatorship or tutorship, or an official extract therefrom, shall, together with the declaration, be produced and left with the general manager or other officer or agent of the bank.

2. The general manager or other officer or agent shall thereupon enter in the register of shareholders the name of the person entitled under the transmission. 53 V., c. 31, s. 41. Am.

The Quebec Statute 55-56 Vict. chap. 17, imposes a tax on the transmission of property by death, and provides (Art. 1191*d*, 5), that no transfer of the property of any estate or succession shall be valid nor shall the title vest in any person until the tax has been paid. It was held that this statute was *intra vires*, and a bank was justified in refusing to register a transfer of shares by executors until proof was given that the tax had been paid: *Heneker v. Bank of Montreal*, Q. R. 7 S. C. 257 (1895).

From the report it is to be inferred that the declaration of transmission was duly made and the names of the executors entered on the list of shares. They then desired to transfer the shares without paying the tax.

An executor filed with the bank a copy of the probate of a will, and required the entry of his name as entitled to the stock of the testator in his capacity of executor. The bank refused on the ground that the stock was specifically bequeathed to certain legatees. He applied for an injunction, and it was held that it was the duty of the bank to enter his name in the register, and that there was no obligation on the bank to see that the bequests of the will were carried out by the executor: *Boyd v. Bank of New Brunswick*, N. B. Equity Cases, 545 (1893).

51. Transmission by decease. — Notwithstanding anything in this Act, if the transmission of any share of the capital stock has taken place by virtue of the decease of any shareholder, the production to the directors and the deposit with them of—

- (a) any authenticated copy of the probate of the will of the deceased shareholder, or of letters of administration of his estate, or of letters of verification of heirship, or of the act of curatorship or tutorship, granted by any court in Canada having power to grant the same, or by any court or authority in England, Wales, Ireland, or any British colony, or of any testament, testamentary or testament dative expedé in Scotland; or,
- (b) an authentic notarial copy of the will of the deceased shareholder, if such will is in notarial form according to the law of the province of Quebec; or,
- (c) if the deceased shareholder died out of His Majesty's dominions, any authenticated copy of the probate of his will or letters of administration of his property, or other document of

like import, granted by any court or authority having the requisite power in such matters, shall be sufficient justification and authority to the directors for paying any dividend, or for transferring or authorizing the transfer of any share, in pursuance of and in conformity to the probate, letters of administration, or other such document as aforesaid. 53 V., c. 31, s. 42. Am.

The words " notwithstanding anything in this Act " are new, and were added to make it clear that a bank might dispense with the production of the declaration required by section 47, or its authentication under section 49.

In the Province of Quebec a will may be made in any one of three forms: (1) Notarial, (2) holograph, and (3) in English form before two witnesses. The two latter require probate. A notarial will is made in the presence of two notaries, or of one notary and two witnesses, and does not require probate; a copy certified by the notary, who retains possession of the original will being equally authentic with a copy of a will in one of the other forms admitted to probate and certified by the clerk of the Court.

" Letters of verification of heirship " are issued by the Superior Court of Quebec in cases of intestacy when the deceased has property outside of that province: C. C. Art. 650a. Administrators and letters of administration are unknown in Quebec. The property of a deceased intestate vests immediately in his heirs or next of kin, in accordance with the French legal maxim " le mort saisit le vif." These must provide for the administration of the estate themselves.

Where shares belong to a Quebec minor he must be represented by a tutor appointed by the prothonotary or

a Judge of the Superior Court: C. C. Art. 249. A curator is appointed by the same authority to any person who is interdicted for imbecility, insanity, madness or prodigality; also to emancipated minors and to children conceived but not yet born: C. C. Arts. 325 and 338. Curators to property are those appointed: (1) to the property of absentees; (2) in cases of substitution; (3) to vacant estates; (4) to the property of extinct corporations; (5) to property abandoned, and (6) to property accepted under benefit of inventory: C. C. Art. 347.

A shareholder in the province of Quebec by his will made his mother usufructuary legatee of all his property; a nephew, who was a minor living with his parents in the U.S., being named universal legatee in ownership. A tutor *ad hoc* to the property of the minor was appointed by the Court at Montreal, for the taking of the inventory. The executors and the tutor *ad hoc* obtained leave of the Court to sell the bank stock to make repairs on certain buildings. A regular tutor was subsequently appointed, and he duly accepted the executors' account, including this item. It was held that the order to sell was illegal, the tutor *ad hoc* having no such authority, but as the matter was ratified by a tutor duly appointed, and the minor received the benefit, he could not, after coming of age, recover the value of the stock from the bank: *Donohue v. Bank Jacques Cartier*, Q. R. 11 S. C. 90 (1896).

The object of this section appears to be to authorize foreign executors, administrators, etc., of a deceased foreign shareholder to have the shares registered in their names and to authorize them to draw dividends, and transfer the shares on lodging with the bank an authenticated copy of the foreign probate, letters of administration, etc., without taking out ancillary probate or letters of administration, if the will or the foreign law authorizes the executors, administrators, etc., to perform these acts.

This has been the policy of the civil law and has been specially authorized in the province of Quebec by Statute

and by the Code. Article 80 of the Code of Civil Procedure reads as follows: "Any person who, according to the laws of a foreign country, is authorized to represent a person who has died or made his will therein, leaving property in the province, may also appear as such in judicial proceedings before any court in the province." This was derived from section one of C. S. L. C. chap. 91, which provided that all executors, administrators and other legal representatives legally seized by foreign law of the estate of a deceased person or representing him under the foreign law, shall be recognized, and their legal capacity be of equal validity and effect to all legal intents as in the country where they reside, or were appointed, or where the will was made. This is fuller than the language of the Code, but there is no suggestion that the Code was not to be of the same effect as the Statute, and the jurisprudence has been consistent with this construction.

Under the law of England a foreign executor or administrator cannot sue or be sued there, nor can he intermeddle with the estate of the deceased in England without making himself liable as executor *de son tort*: Williams on Executors (10th ed.), pp. 269 and 1565, cited with approval by Smith, L.J., in *Attorney-General v. New York Breweries Co.*, [1898] 1 Q. B. 205. This was a case in which an English company registered in England undertook, upon the death of a New York shareholder, to transfer into the names of his New York executors the shares standing in his name and to pay to them the dividends in New York, where they had been accustomed to pay them to him, without taking out representation to the deceased in England. It was held by the Court of Appeal that they could not do so.

So far as appears from reported cases the right of the Dominion Parliament to legislate that a foreign probate, etc., shall be sufficient justification and authority to a bank for paying dividends and authorizing the transfer of shares, has not been called in question in any of those

provinces where the law is similar to that of England. It has probably been considered that such right would be upheld under the principles laid down by the Privy Council in *Cushing v. Dupuy*, 5 App. Cas. (1880), and *Tennant v. Union Bank*, [1894] A. C. 31.

In section 97 a similar provision is made for paying over the deposit of a deceased depositor provided it does not exceed \$500.

SHARES SUBJECT TO TRUSTS.

52. The bank shall not be bound to see to the execution of any trust, whether expressed, implied or constructive, to which any share of its stock is subject.
2. The receipt of the person in whose name any such share stands in the books of the bank, or, if it stands in the names of more persons than one, the receipt of one of such persons, shall be a sufficient discharge to the bank for any dividend or any other sum of money payable in respect of such share, unless, previously to such payment, express notice to the contrary has been given to the bank.
3. The bank shall not be bound to see to the application of the money paid upon such receipt, whether given by one of such persons or all of them. 53 V., c. 31, s. 43.

Although the present section has been in the Bank Act since 1871, and has also been in the Companies Acts of the Dominion and of several of the provinces for many years, it is surprising that it appears to have been so seldom construed by the courts.

If the first sub-section were not in the Act, it would probably be claimed—at least in those provinces which

derive their law from England—that notice of a beneficial interest in some person other than the legal holder might constitute the bank a trustee for such other person.

A similar clause in the Loan Corporations Act was considered in the *Birkbeck Loan Co. v. Johnston*, 3 O. L. R. 497 (1902). Mrs. Johnston held certain shares in trust for her children. In rendering the judgment of the Divisional Court, Street, J., said, at p. 506:—"Mrs. Johnston had no more right, so far as appears, to mortgage these shares than if they had stood in the name of her children instead of in her name, in trust for them. It is argued that the company by sec. 53 of ch. 205, R. S. O. 1897, was entitled to disregard the trusts of which it had notice as attaching to these shares, but I do not so understand the meaning of that provision. The section relieves the company from the duty of seeing to the execution of any trust, to which any shares are subject, and enables it to pay money to a shareholder, who holds shares upon any trust without seeing that the money is properly dealt with by the shareholder after receiving it; but it goes no farther. It does not entitle the company to lend money to A. with express notice that he is a mere trustee for B."

The charter of the Molsons Bank contained a clause similar to sub-section 1. In *Simpson v. Molsons Bank*, [1895] A. C. 270, this clause was discussed. Certain shares of the bank were bequeathed to executors in which one of them had a life interest with a substitution in favor of his children. The bank was in possession of a copy of the will, believed to have been given to it when the declaration of transmission to the executors was made. The children were deprived of the shares by a transfer made to their father. The Privy Council was satisfied that at the date of the transfer the bank had not any notice which could warrant the inference that they were aware that a breach of trust was intended or was being committed. They further held that it had not been proved that the bank had any notice of the

particular trust in favor of the children, or which could affect them with knowledge of the particular way it ought to have been executed by the trustees. The bank was consequently held not liable for having permitted the transfer of the shares.

In *Boyd v. The Bank of New Brunswick*, N. B. Equity Cases 545 (1891), the plaintiff had grants of administration and probate, and filed declarations of transmission with these grants with the bank and required them to transfer the stock. The bank declined on the ground that by the will the shares covered by it were specifically bequeathed to be divided among certain legatees. It was held by Palmer, J., that as these shares were personal property the legal title to them under the law of the province vested in the plaintiff and he had the right to sell them to pay the expenses of the estate, to pay all creditors and then to give what remained over to the legatees, and that he did not require the assent of a legatee or any other person to transfer the stock. He cites the cases of *Hartga v. The Bank of England*, 3 Ves. 35 (1796), *The Bank of England v. Parsons*, 5 Ves. 665 (1800), and *The Bank of England v. Moffat*, 3 Bro. C. C. 260 (1791), as authorities that even without such a clause as this, a bank could not prevent an executor from transferring stock of the testator to himself or a third party.

There is no similar clause in the English Companies Acts, but section 30 of the Act of 1862 provides that "No notice of any trust, expressed, implied or constructive, shall be entered on the register or be receivable by the registrar;" and the 22nd Article of Association that "The company shall not be bound by or recognize . . . any other right in respect of a share, except an absolute right thereto in the person from time to time registered as the holder thereof."

These provisions are, it will be seen, much stronger and go farther than this section of the Bank Act. Their effect was considered in the case of *La Société Générale v. Tramways Union Co.*, 14 Q. B. D. 424 (1884), where

the Master of the Rolls expressed a doubt as to the secretary or directors being personally liable for not preventing a transfer involving a breach of trust. However, Cotton, L. J., said at p. 445: "Where the directors are asked to register a transfer which from circumstances in fact known to them at the time would be in violation of the rights of others, in my opinion they cannot, either safely to themselves, or without disregard of their duty, register the transfer, at least without allowing time for enquiry and for the assertion of the equitable rights, if any, inconsistent with the claim to register the transfer." Lindley, L.J., said at p. 453: "I have no doubt that if directors allow a transferor to make a transfer which they know to be fraudulent, they could be made liable for the value of the shares transferred, they would make themselves parties to his fraud. Moreover, a refusal by directors, or an omission on their part, to pay attention to a notice given to them by a person having an equitable interest in shares, and requiring the directors not to register a transfer for such time as may be necessary to allow him time to apply for a proper restraining order, would be *prima facie* improper."

Notice that a shareholder has given a lien upon his shares as security, is not notice of a trust, and the bank cannot obtain a prior lien upon them for subsequent advances to the shareholder: *Bradford Banking Co. v. Briggs*, 12 App. Cas. 29 (1886).

It would be a question to be determined according to the particular circumstances of each case whether there was sufficient to put the bank upon its guard and to justify or require it to give notice to the *cestui que trust* or person having the equitable interest in order to give an opportunity, if desired, to take steps to prevent the contemplated breach of trust.

If under the law of the province the trustee or other person holding the stock in a representative capacity is entitled to transfer the stock, the bank can only interfere in such exceptional circumstances as above stated.

53. When not personally liable.—No person holding stock in the bank as executor, administrator, guardian, trustee, tutor or curator—

(a) of or for any estate, trust or person named in the books of the bank as being represented by him; or,

(b) if the will or other instrument under or by virtue of which the stock is so held be named in the books of the bank in connection with such holding,

shall be personally subject to any liability as a shareholder; but the estate and funds in his hands shall be liable in like manner and to the same extent as the testator, intestate, ward or person interested in such estate and funds would be, if living and competent to hold the stock in his own name.

2. If the trust is for a living person or corporation, such person or corporation shall also be liable as a shareholder to the extent of his or its respective interest in the shares.

3. If the estate, trust or person so represented, or will or other instrument, is not named in the books of the bank, the executor, administrator, guardian, trustee, tutor or curator shall be personally liable in respect of the stock, as if he held it in his own name as owner thereof. 63-64 V., c. 26, s. 8. Am.

The words “ or corporation ” and “ to the extent of his or its respective interest in the shares,” are new. If the word “ living ” had not preceded “ person,” the latter would have included a corporation: R. S. C. c. 1,

s. 34 (20). The words "or will or other instrument" are also new.

Where a person holds stock simply "in trust," or as "executor," administrator," "trustee," "tutor," "curator," or the like, he is personally liable for unpaid calls, and also for the double liability in case of the insolvency of the bank. The only way to escape such liability is to have the testator, intestate, *cestui que trust*, minor, or other person whom he represents, also named in the books of the bank.

A loan company, which by its charter is authorized to lend money on bank shares, and which advances money on shares transferred to it, and accepted in the ordinary absolute form, cannot escape liability on the ground that it is merely a trustee for the borrower: *Re Central Bank, Home Savings and Loan Co.'s Case*, 18 Ont. A. R. 489 (1891).

In Quebec a mandatary or agent who acts in his own name is liable to the third party with whom he contracts, without prejudice to the rights of the latter against the mandator or principal also: C. C. 1716. A person who subscribes for stock in his own name for another is liable thereon jointly and severally with the latter: *Molsons Bank v. Stoddart*, M. L. R. 6 S. C. 18 (1890).

The fact that bank shares are purchased "in trust" at a time when the trustee was solvent imports an interest in somebody else, and the onus is upon a party who has seized such shares to prove that they are in fact the property of the trustee, and as such available to satisfy the demand of his creditors: *Muir v. Carter*, and *Holmes v. Carter*, 16 S. C. Can. 473 (1889).

A party who is *sui juris* and beneficially entitled to shares which he cannot disclaim, is personally bound, in the absence of contract to the contrary, to indemnify the registered holder against calls upon them: *Hardoon v. Belilios*, [1901] A. C. 118.

The present section refers exclusively to shares of the bank held in trust; the other question as to the bank taking shares in a company held in trust as collateral security, or otherwise dealing with them, is treated under sections 76 and 96.

ANNUAL AND SPECIAL STATEMENTS.

- 54. For annual meeting.**—At every annual general meeting of the shareholders for the election of directors, the outgoing directors shall submit a clear and full statement of the affairs of the bank, exhibiting, on the one part, the liabilities of the bank, and, on the other part, the assets and resources thereof, and the statement shall be signed by the general manager or other principal officer of the bank next in authority in the management of the affairs of the bank at the time at which the statement is signed, and shall be signed on behalf of the board by the president or a vice-president or any other two directors, neither of whom shall be an officer of the bank.
2. The statement shall, without restricting the generality of the requirement of the next preceding sub-section, include and show, on the one part, the amount of the—
- (a) capital stock paid in,
 - (b) rest or reserve fund,
 - (c) dividends declared and unpaid,
 - (d) balance of profits, as per profit and loss account referred to in sub-section 4 of this section,

- (*e*) notes of the bank in circulation,
- (*f*) deposits not bearing interest,
- (*g*) deposits bearing interest, including interest accrued to date of statement,
- (*h*) balances due to other banks in Canada,
- (*i*) balances due to banks and banking correspondents in the United Kingdom and foreign countries,
- (*j*) bills payable,
- (*k*) acceptances under letters of credit,
- (*l*) liabilities not included in the foregoing;
and the statement shall include and show, on the other part, the amount of—
 - (*a*) current coin held by the bank,
 - (*b*) Dominion notes held,
 - (*c*) notes of other banks,
 - (*d*) cheques on other banks,
 - (*e*) balances due by other banks in Canada,
 - (*f*) balances due by banks and banking correspondents elsewhere than in Canada,
 - (*g*) Dominion and provincial government securities, not exceeding market value,
 - (*h*) Canadian municipal securities, and British, foreign and colonial public securities other than Canadian,
 - (*i*) railway and other bonds, debentures and stocks, not exceeding market value,

- (j) call and short (not exceeding thirty days) loans in Canada on bonds, debentures and stocks,
 - (k) call and short (not exceeding thirty days) loans elsewhere than in Canada,
 - (l) other current loans and discounts in Canada (less rebate of interest),
 - (m) other current loans and discounts elsewhere than in Canada (less rebate of interest),
 - (n) liabilities of customers under letters of credit as per contra,
 - (o) real estate other than bank premises,
 - (p) overdue debts, estimated loss provided for,
 - (q) bank premises, at not more than cost, less amounts (if any) written off,
 - (r) deposit with the Minister for the purposes of the Circulation Fund,
 - (s) deposit in the central gold reserves,
 - (t) other assets not included in the foregoing.
3. Any other or further particulars than those called for by sub-section 2 of this section, which, in the opinion of the directors, are necessary to a full and clear statement of the affairs of the bank, shall also be included and shown in such statement.
 4. A profit and loss account for the financial year of the bank next preceding the date of the annual general meeting shall accompany the

statement and be attached thereto, and shall be signed on behalf of the board by the same persons as are required by this section to sign the statement referred to.

5. A copy of the statement and of the profit and loss account, together with a copy of the minutes of the annual general meeting, shall be sent within four weeks thereafter to each shareholder at his last known post office address, as shown by the books of the bank, and a copy of each of these shall be sent to the Minister. 53 V., c. 31, s. 45. Am.

This section has been entirely recast in the revision. As it stood in the old Act it enumerated only some ten items of information which were to be given to the shareholders instead of thirty-two in the present section. The requirement as to the signing of the statement is also new. The auditors' report must be attached to the statement submitted to the annual meeting: sec. 56, s.-s. 21.

If any copy of the statement or of the profit and loss account required by sub-section 4, is issued without being properly signed, or if a copy of the statement is issued without having a copy of the auditors' report attached, the bank and the officials responsible are liable to a fine not exceeding \$250: sec. 140A.

The making of a wilfully false statement is an indictable offence: sec. 153.

55. Further statements.—The directors shall also submit to the shareholders such further statements of the affairs of the bank as the shareholders require by by-law passed at the annual general meeting, or at any special general meeting of the shareholders called for the purpose.

2. The statements so required shall be submitted at the annual general meeting, or at any special general meeting called for the purpose, or at such time and in such manner as is set forth in the by-law of the shareholders requiring such statements. 63-64 V., c. 26, s. 9. Am.

This section was added to the Act of 1890 by the Amending Act of 1900, in order to enable shareholders to obtain fuller information than that furnished in the annual statement in case they so desire. As it stood until the late revision, it contained the words "other than statements with reference to the account of any person dealing with the bank" after the word "bank" in the second line, which have been stricken out of the section. This is in harmony with the omission of the old section 56 prohibiting inspection of a customer's account except by a director.

One effect of the change in this section will be to remove an objection to the shareholders obtaining information regarding the state of the account of any customer of the bank.

SECRECY OF BANK ACCOUNTS.

Before the late revision section 56 of the Act read as follows:—"The books, correspondence and funds of the bank shall, at all times, be subject to the inspection of the directors.—2. No person, who is not a director, shall be allowed to inspect the account of any person dealing with the bank." This section was not inserted in the new Act, and the old Act was repealed: sec. 159. The matter is now on the same footing here as in England, where there is no legislation on the subject, save in so far as an inference may be drawn from our repealing legislation. Under our law as it stood it was held that a bank manager might be compelled to testify as to the state of a customer's account when it was relevant to

the issue: *Hannum v. McRae*, 18 Ont. Pr. 185 (1898); and the liquidator of a company was held entitled to go into the private bank account of the manager of the company, to show that the proceeds of notes which formed part of the claim of the bank against the company went to the private account of the manager: *Re Chatham Banner Co.*, 2 O. L. R. 672 (1901). In *Ryan v. Bank of Montreal*, 16 O. L. R. 65 (1908), it was held that the bank had a right to allow the prospective purchaser of some securities pledged by a customer to see the entries in his account and the papers relating to them.

In England, in the case of *Tassell v. Cooper*, 9 C. B. 509 (1850), doubt was expressed by Maule, J., whether there was any such duty imposed there upon a bank as not to disclose the state of a customer's account. In *Hardy v. Veasey*, L. R. 3 Ex. 107 (1868), Byles, J., expressed the opinion that a bank might make such disclosure on a justifiable occasion, and that when it was made with a reasonable hope and an honest intention of getting assistance for the customer, no action would lie. In *Foster v. Bank of London*, 3 F. & F. 214 (1862), where a bill was presented and there were not sufficient assets, and the bank informed the holder of the amount of the deficiency, and so enabled him by paying in a small sum to obtain payment of the bill, it was held that the bank should not have gone further than to say "not sufficient assets," and that an action lay for this breach of duty. In this case it will be seen that the disclosure was made for the purpose of giving one of the customer's creditors an advantage over his other creditors.

See, also, *Waller v. Lock*, 7 Q. B. D. at p. 622 (1881); *Robshaw v. Smith*, 38 L. T. 423 (1878); and the note under section 55, *supra*.

It will probably be held that it will be for the Judge or jury trying each case to say whether upon the facts of that particular case the disclosure was reasonable and proper.

Shareholders' Audit.

For some years an agitation had been carried on in the public press and to some extent in the Bankers' Association in favor of an independent audit of banks. It was quickened from time to time by the disastrous failures that took place. The Association and the banking profession generally were strongly opposed to the innovation. Among the arguments put forward against it were: (1) That such an audit would be practically impossible in Canada on account of the large number of branches, spread over the Dominion and even beyond it, in the case of some of the large banks; and (2), that a Government audit would be not only useless, but would tend to lull shareholders and the public to a false security, and to relax the vigilant scrutiny which they would otherwise exercise.

The answer made by the advocates of the scheme was that it would probably be sufficient to inspect the head office or at most this and a few of the larger branches; and they pointed to the fact that all the failures of banks in Canada had resulted from mis-management at the head office and not in a single instance from occurrences at a branch office. Some of the banks voluntarily adopted the system of an audit by independent accountants.

The matter was fully discussed at the session of 1913 in the House of Commons and in Committee, and the outcome was the enactment of the following section, which was numbered 56, and takes the place of the old section regarding the secrecy of bank accounts.

56. Shareholders' audit.—The general managers of the banks (or in the absence of a general manager of any bank the official designated by him, or in default of such designation the principal officer of the bank next in authority)

shall, at a meeting duly called by the president of the Association for the purpose before the thirtieth day of September, nineteen hundred and thirteen, and thereafter before the thirtieth day of June in each year, select by ballot persons deemed by them to be competent (no one of whom shall be a body corporate) not less than forty in number, any one of whom shall, subject to the provisions hereinafter contained, be eligible to be appointed an auditor under the provisions of this Act.

The "Association" mentioned is the Canadian Bankers' Association, incorporated by chapter 93 of the Statutes of 1900: see 2 (*a*). This Act is printed in the Appendix.

2. A list of persons so selected, together with their post office addresses and occupations, shall forthwith be delivered or sent by registered post to the Minister, and the Minister may, in the case of the first selection, as hereinbefore provided, within ten days after the receipt of the list, and thereafter each year within sixty days after the receipt thereof, disapprove, as to eligibility to be appointed auditor of a particular bank or banks, or wholly disapprove, of the selection of any person named in the list, and such person shall not, to the extent of such disapproval, be qualified to be appointed an auditor under this section.
3. The Minister shall communicate his disapproval, if any, to the Association.
4. The Association shall, as soon as may be after the expiry of the time given to the Minister

for disapproval, cause the list of persons qualified as hereinbefore provided, with their respective post office addresses and occupations, to be published in two successive issues of *The Canada Gazette*, and any limitation as to eligibility for the auditorship of a particular bank or banks of the persons named in the list shall be stated in the advertisement.

The first list was published in the *Canada Gazette* of September 13th and 20th, 1913. It contains 64 names, 62 of them being resident in Canada and 2 in New York. In the case of two of them the Minister has indicated his disapproval of the eligibility of each of them for a particular bank.

5. No person shall be qualified to act as an auditor of a bank under this Act unless his name appears in the published list for the year, but this sub-section shall not apply to an appointment of an auditor made by the Minister in pursuance of the provisions of this Act.

The Minister may appoint as auditor a person whose name is not on the list in the circumstances mentioned in sub-sections 7, 8 and 15, and in section 56a.

6. The shareholders shall, at each annual general meeting, appoint an auditor or auditors, from the last published list of persons qualified, to hold office until the next annual general meeting.

The vote for auditors must be by ballot, and the appointment determined by a majority of the votes of the shareholders present at the meeting or represented by proxy. Each shareholder has one vote for each share held by him for at least thirty days before the time of

meeting: sec. 32, s.-ss. 1, 2 and 3. The shareholders should at the same time fix the remuneration of the auditors: s.-s. 16.

7. After the appointment of an auditor or auditors under the next preceding sub-section of this section, shareholders, the aggregate of whose paid-up capital stock is equal to at least one-third of the paid-up capital stock of the bank, who in writing under their respective hands allege that they are dissatisfied with the appointment so made, may, in and by the same writing, make application to the Minister to have the person or persons so appointed superseded, and the Minister may, after such inquiry as he may deem necessary, select an auditor or auditors instead of the auditor or auditors appointed at the annual general meeting, and the auditors so appointed shall thereupon cease to be the auditors of the bank and the auditors so selected shall be the auditors of the bank until the next annual general meeting.
8. If an appointment of auditors is not made at an annual general meeting, the Minister shall, on the written application of a shareholder, appoint an auditor or auditors of the bank to hold office until the next annual general meeting, and the Governor in Council shall fix the remuneration to be paid by the bank for the services of the auditor or auditors so appointed.

The person appointed auditor under either of these sub-sections need not be one whose name is on the list published in the *Canada Gazette*.

9. A director or officer of the bank shall not be capable of being appointed auditor of the bank.

“ Director ” includes the president, honorary president, and the vice-presidents.

It is more difficult to say precisely who would be included in the term “ officer.” It would no doubt include the general manager, local managers, and other salaried officials appointed by the directors. It might include the solicitors of the bank, especially if they were paid a salary: *Ex parte Valpy*, L. R. 7 Ch. 289 (1872); *Re Liberator Society*, 71 L. T. 406 (1894). As the object of the legislation is to select persons who will be independent of the directors, no doubt a wider interpretation will be given to the language, and if shareholders object on the ground that the person named is likely by reason of his appointment or employment to be unduly biassed in favor of the directors, weight will be given to such objections by the Minister.

10. A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless written notice of an intention to nominate that person to the office of auditor has been given by a shareholder to the bank at its chief office, not less than twenty-one days before the annual general meeting, and the bank shall deliver a copy of any such notice to the retiring auditor, if any, and shall give notice of the names of the persons eligible for nomination at the said meeting, and by whom such persons are respectively intended to be nominated, to every shareholder of the bank, by mailing the notice in the post office, post paid, to the last known

post office address of the shareholder as shown by the records of the bank, at least fourteen days prior to the annual general meeting.

The policy of the Act is clearly to encourage permanency in the office of auditor, as evidenced by the checks placed in the way of making a change.

11. If any casual vacancy occurs in the office of auditor, the surviving or continuing auditor or auditors, if any, may act, but if there is no surviving or continuing auditor, and such vacancy has occurred more than three months before the annual general meeting, the directors shall, as hereafter in this section provided, call a special general meeting of the shareholders for the purpose of filling the vacancy.
12. Before calling such special general meeting the directors shall, as soon as may be after the vacancy occurs, give public notice by advertisement in six consecutive issues of one or more daily newspapers published in the place where the chief office of the bank is situate, and if no daily newspaper is published at that place, then by advertisement in two consecutive issues of a newspaper published weekly in that place, of the vacancy in the office of auditor, and that the vacancy will be filled in the manner provided by this Act.
13. A person shall not be capable of being appointed auditor to fill such vacancy unless notice of an intention to nominate that person to the office of auditor has been given by a shareholder to the bank at its chief office

within ten days after the last publication of the notice called for by the next preceding sub-section.

14. The directors shall, as soon as may be after the expiry of the ten days mentioned in the next preceding sub-section, call a special general meeting of the shareholders for the purpose of filling the vacancy, and notice of such meeting, specifying the object, and stating the names of the persons eligible for nomination, and by whom such persons are respectively intended to be nominated, shall be given to every shareholder of the bank by mailing the notice in the post office, post paid, to the last known post office address of the shareholder as shown by the records of the bank, at least fourteen days prior to the date fixed for the meeting.
15. If the vacancy contemplated by sub-section 11 of this section is not filled in the manner provided, or if a casual vacancy occurs in the office of auditor less than three months before the annual general meeting, the Minister in the former case shall, and in the latter case may, on the written application of a shareholder, appoint an auditor or auditors to hold office until the next annual general meeting, and the Governor in Council shall fix the remuneration to be paid by the bank for the services of the auditor or auditors so appointed.
16. The remuneration of auditors appointed by the shareholders shall be fixed by the share-

holders at the time of their appointment, and in the event of such appointees being superseded and other auditors selected, as provided by sub-section 7 of this section, the remuneration so fixed shall be divided between them according to the length of time they respectively are auditors of the bank.

17. Every auditor of a bank shall have a right of access to the books and accounts, cash, securities, documents and vouchers of the bank, and shall be entitled to require from the directors and officers of the bank such information and explanation as may be necessary for the performance of the duties of the auditors.
18. If the bank has branches or agencies it shall be sufficient for all the purposes of this section if the auditors are allowed access to the returns, reports and statements and to such copies of extracts from the books and accounts of any such branch or agency as have been transmitted to the chief office, but the auditors may in their discretion visit any branch or agency for the purpose of examining the books and accounts, cash, securities, documents and vouchers at the branch or agency.
19. It shall be the duty of the auditors once at least during their term of office, in addition to such checking and verification as may be necessary for their report upon the statement submitted to the shareholders under section 54 of this Act, and at a different time, to check the cash and verify the securities of the bank

at the chief office of the bank against the entries in regard thereto in the books of the bank, and, should they deem it advisable, to check and verify in the same manner the cash and securities at any branch or agency.

20. The auditors shall make a report to the shareholders—

- (a) on the accounts examined by them;
- (b) on the checking of cash and verification of securities referred to in the next preceding sub-section; and,
- (c) on the statement of the affairs of the bank submitted by the directors to the shareholders under section 54 of this Act during their tenure of office;

and the report shall state—

- (a) whether or not they have obtained all the information and explanation they have required;
- (b) whether, in their opinion, the transactions of the bank which have come under their notice have been within the powers of the bank;
- (c) whether their checking of cash and verification of securities required by sub-section 19 of this section agreed with the entries in the books of the bank with regard thereto; and,
- (d) whether, in their opinion, the statement referred to in the report is properly drawn up so as to exhibit a true and correct view of the

state of the bank's affairs according to the best of their information and the explanations given to them, and as shown by the books of the bank.

21. The auditors' report shall be attached to the statement submitted by the directors to the shareholders under section 54 of this Act, and the report shall be read before the shareholders in the annual general meeting.
22. Any further statement of the affairs of the bank submitted by the directors to the shareholders under section 55 of this Act shall be subject to audit and report, and the report of the auditors thereon shall state—
 - (a) whether or not they have obtained the information and explanation they have required;
 - (b) whether, in their opinion, such further statement is properly drawn up so as to exhibit a true and correct view of the affairs of the bank, in so far as the by-law requires a statement thereof, according to the best of their information and the explanations given to them, and as shown by the books of the bank.
23. The report shall be attached to the further statement referred to in the next preceding sub-section, and shall be read before the shareholders at the meeting to which such further statement is submitted, and a copy of the statement and report shall be sent by the directors at and after the meeting to any shareholder applying therefor. New.

AUDITORS' REPORT TO MINISTER.

56A. The Minister may direct and require any auditor appointed under the next preceding section of this Act, or any other auditor whom he may select, to examine and inquire specially into any of the affairs or business of the bank, and the auditor so appointed or selected, as the case may be, shall, at the conclusion of his examination and inquiry, report fully to the Minister the results thereof.

2. For the purposes of this section the auditor appointed or selected as aforesaid shall have all the rights and powers given to an auditor under the next preceding section.
3. For the performance of the duties imposed by this section the auditor shall be paid as remuneration, out of the Consolidated Revenue Fund, such sum as the Governor in Council may direct.
4. The person selected by the Minister under this section shall, for the purposes of section 153 of this Act, be deemed to be an auditor of the bank.

Section 153 provides that the making of a wilfully false report is an indictable offence punishable by imprisonment for a term not exceeding five years; and the negligently making or concurring in a report containing any false or deceptive statement is punishable by imprisonment for a term not exceeding three years.

DIVIDENDS.

- 57. Quarterly or half-yearly.**—The directors of the bank shall, subject to the provisions of this Act, declare quarterly or half-yearly dividends of so much of the profits of the bank as to the majority of them seems advisable.
2. The directors shall give public notice, published for at least four weeks, of the payment of such dividends previously to the date fixed for such payment.
 3. Dividends shall, on and after the date fixed for payment, be payable at the chief office of the bank, and at such of its branches, and at such other places, as the directors prescribe.
 4. The directors may close the transfer books during a certain time, not exceeding fifteen days, before the payment of each dividend. 53 V., c. 31, s. 47, s.-ss. 1, 2 and 3.

Formerly all Canadian banks declared their dividends half-yearly. In 1894 the Dominion Bank first declared its dividends quarterly. The practice has now become quite general. The amount of the dividend is decided by a majority of the directors, subject to the two next sections. In some companies the shareholders pass upon this. In banks, if the shareholders are dissatisfied with the amount, their only remedy, so long as the directors act in good faith, appears to be to elect new directors. It is a matter of internal management and the courts have no power to interfere: *Burland v. Earle*, [1902] A. C. at p. 95. Profits in this section means what are sometimes called "gross profits," that is, the amount of assets over liabilities, the latter including the amount of

the paid-up capital. The Act contemplates the accumulation of reserves out of the profits; sec. 59. The amount of the profits to be paid to the shareholders from time to time as above stated is in the discretion of the directors. If the profits have been exhausted by dividends or losses, and the capital impaired, the profits shall be applied to make good such losses: sec. 39.

Canadian banks pay their dividends on the paid-up capital. Where the subscribed capital is not wholly paid up the declaration of dividends should be specific on this point. In England the charter of a company provided that the directors might "declare a dividend to be paid in proportion to the shares." Part of the capital was fully paid up, and on another part only 25 per cent was paid. The directors declared a dividend in proportion to the amount paid. The House of Lords set this aside and held that the shares were all to be treated alike, those partly paid to receive the same as those fully paid. Their lordships held that it was not unreasonable that shareholders should be compensated for their risk, even if they had not actually paid the money: *Oakbank Oil Co. v. Crum*, 8 App. Cas. 65 (1882).

In England it has been held that in case of a sale, if there be no agreement to the contrary, a dividend, if declared before the sale, belongs to the seller, if declared after the sale, to the purchaser, even although the transfer may have been completed only after the dividend was declared. Where stock was sold by auction on the 21st of August, the purchase to be completed on the 29th, and a meeting of shareholders was held on the 28th August, which declared a dividend for the half year ending June 30th, it was held that the dividend belonged to the purchaser: *Black v. Homersham*, 4 Ex. D. 24 (1878). The purchaser of a life interest in stock is entitled to a dividend becoming due on the day following the sale: *Anson v. Towgood*, 1 Jac. & W. 637 (1820). A dividend declared on the 16th of September made payable on the 1st November was

held to belong to the life tenant, who died on the 18th September: *Wright v. Tuckett*, 1 J. & H. 266 (1860). A testatrix held certain bank shares on which in June, 1865, a dividend was declared payable half in June, 1865, and half in January, 1866. She died in December, 1865. It was held that the January dividend formed part of the corpus of her residuary estate and did not pass under a bequest of the annual income of such residuary personal estate: *De Gendre v. Kent*, L. R. 4 Eq. 283 (1867).

In Canada, a different usage has prevailed generally with regard to bank dividends, as between the seller and the purchaser. On the stock exchange, in the absence of an agreement to the contrary, it is understood that in case a sale is made in time to allow of the transfer being completed before the books are closed, the dividend previously declared belongs to the purchaser. In the case of a sale after that time it belongs to the seller. Banks make out their dividend warrants in favor of the person in whose name the stock stands at the time of the closing of the transfer books.

The bank has a lien on unpaid dividends, if the holder of the shares is indebted to it: sec. 77.

Notice of the dividends is to be given for at least four weeks in one or more newspapers published at the chief office of the bank, and in the Canada Gazette: sec. 2, s.-ss. 2 and 3.

Were it not for sub-section 3 the bank could be compelled to execute a transfer at any time: *Re Panton and the Cramp Steel Co.*, 9 O. L. R. 3 (1904).

5. No prescription.—The liability of any bank under any law, custom or agreement to pay dividends heretofore or hereafter declared and payable on its capital stock shall continue notwithstanding any statute of limitations or any

enactment or law relating to prescription. 53 V., c. 31, s. 90; R. S., c. 29, ss. 36 (4), 126.

This sub-section comes from the old section 126 which refers both to dividends and deposits. The other portion of 126 has been made a part of section 92. The expression, "the bank" has by a clerical slip been made to read "any bank," but the meaning has not been changed. The clause was first enacted in 1890, and was then made retroactive and a condition of the extension of the bank charters.

The relation between a bank and its customers being that of debtor and creditor, the ordinary limitation or prescription would but for this sub-section run in favour of the bank, so that in the province of Quebec the claim of a shareholder for dividends would be extinct in five years, and in the other provinces in six years.

The bank must make a return annually of all dividends that remain unpaid for more than five years: sec. 114.

58. Dividend not to impair capital.—No dividend or bonus shall be declared so as to impair the paid-up capital of the bank.

2. The directors who knowingly and wilfully concur in the declaration or making payable of any dividend or bonus, whereby the paid-up capital of the bank is impaired, shall be jointly and severally liable for the amount of such dividend or bonus, as a debt due by them to the bank. 53 V., c. 31, s. 48.

Dividend and bonus are practically synonymous; but the former is used to designate the regular division of profits that are expected to be continued, the latter a division from unusual profits or from an accumulation of profits, not expected to be repeated.

If the statement prepared by the proper officers of the bank shews that there is a surplus over and above the paid-up capital, directors declaring a dividend upon this in good faith would not be liable even if an examination of the books would have revealed the actual situation. Only a director who knowingly joined in declaring a dividend which impaired the capital would be liable. See *Dovey v. Cory*, [1901] A. C. 477.

For an instance of the enforcement of the provisions of sub-section 2, see *Stavert v. Lovitt*, 42 N. S. 449 (1908).

It is to be observed that calling up unpaid capital or issuing new shares would not restore the capital so as to allow dividends to be paid. It could only be done by passing the dividends and allowing profits to accumulate, or by reducing the capital as provided by section 35.

59. Dividend limited. — No division of profits, either by way of dividends or bonus, or both combined, or in any other way, exceeding the rate of eight per cent per annum, shall be made by the bank, unless, after making the same, the bank has a rest or reserve fund, equal to at least thirty per cent of its paid-up capital, after deducting all bad and doubtful debts.
53 V., c. 31, s. 49.

The rest or reserve fund of a bank is the accumulated profits of the bank not paid out to the shareholders. In some of the banks it largely exceeds the paid-up capital of the bank. The aggregate amount of this fund for all the banks amounted on the 30th of August, 1913, to \$109,194,211, while their paid-up capital amounted to \$116,818,251. All prosperous banks add to it from year to year.

In making the estimate of the assets of the bank upon which dividends are to be paid, the directors are justified

in acting in good faith upon the reports of competent officers appointed by them: *Dovey v. Cory*, [1901] A. C. 477; or upon the reports of auditors appointed by the shareholders: *Prefontaine v. Grenier*, [1907] A. C. 107.

The word “reserves” is used in this and the two succeeding sections in three entirely separate and distinct senses which is apt to create confusion. In this section, as just stated, it means the bank’s surplus over and above its paid-up capital or the accumulation of its undistributed profits.

In section 60 it means the amount of specie and Dominion notes which a bank has on hand from day to day at the close of each day’s business. It is a reserve only in this sense, that it is available to meet the claims of creditors who may insist on being paid in legal tender.

In section 61 it means the specie and Dominion notes which a bank has placed in the hands of trustees to entitle it to issue its own notes in excess of the amount of its capital plus the extra circulation allowed it from the first of September to the end of February for moving the crops.

CASH RESERVES.

- 60. Dominion notes.**—The bank shall hold in Dominion notes not less than forty per cent. of the cash reserves which it has in Canada.
2. The Minister shall make such arrangements as are necessary for ensuring the delivery of Dominion notes to any bank, in exchange for an equivalent amount of gold coin lawfully current at the several branch offices of the Department of Finance at which Dominion notes are redeemable, in Toronto, Montreal, Halifax, St. John, Winnipeg, Victoria, Charlottetown, Regina and Calgary, respectively.

3. Such notes shall be redeemable at any of the branch offices mentioned in sub-section 2 hereof. 53 V., c. 31, s. 50. Am.

The words " which it has in Canada " in sub-section 1 are new, as also " Regina and Calgary " in sub-section 2.

Banks are not required by the Act to keep any fixed reserve. The average amount of reserves in specie and Dominion notes kept by Canadian banks is about ten per cent. more than the amount of their notes in circulation, and ten per cent. of their total liabilities. Of this about sixty-five per cent. is usually held in Dominion notes and the other thirty-five per cent. in specie.

These Dominion notes are issued under R. S. C. chap. 27. They may be issued to any amount. Up to \$30,000,000 the Government must hold for their redemption at least twenty-five per cent. of the amount outstanding, in gold and securities guaranteed by the British Government. For any amount over \$30,000,000 the Government must hold specie equal to such excess in addition to the amount above stated. They are a legal tender, and are redeemable in specie at Toronto, Montreal, Halifax, St. John, Winnipeg, Victoria, Charlottetown, Regina and Calgary. Monthly statements of the amount of notes outstanding and the amount of gold and securities held for their redemption are published in the *Canada Gazette*. The Act in full will be found in the Appendix.

The local Legislature has authority to enact a by-law imposing a tax on the Dominion notes held by a bank as part of its cash reserves: *Windsor v. Commercial Bank*, 15 N. S. (3 R. & G.) 420 (1882).

In the Act of 1890 the first sub-section contained the penalty for not keeping the required percentage of Dominion notes. This will now be found in section 134.

THE ISSUE AND CIRCULATION OF NOTES.

Canadian banks are Banks of Issue as well as of Discount and Deposit. Their notes form the chief circulating medium for sums of five dollars and upwards. The amount of bank notes in circulation for the year ending June 30th, 1913, ranged from ninety-five to one hundred and fifteen million dollars. Sections 61 to 75 inclusive of the Act relate to their business as Banks of Issue.

61. Bank notes.—The bank may issue and re-issue its notes payable to bearer on demand and intended for circulation: Provided that—

(a) the bank shall not, during any period of suspension of payment of its liabilities, issue or re-issue any of its notes; and,

(b) if, after any such suspension, the bank resumes business without the consent in writing of the curator, hereinafter provided for, it shall not issue or re-issue any of its notes until authorized by the Treasury Board so to do.

2. No such note shall be for a sum less than five dollars, or for any sum which is not a multiple of five dollars.

These two sub-sections have not been altered since they appeared in the revision of 1906.

Before 1871 Canadian banks issued notes for one dollar and upwards. The Bank Act of that year took away the right to issue notes for less than four dollars. In 1880 the present rule was adopted.

Bank notes are promissory notes payable to bearer on demand. They are not a legal tender, but circulate as cash, are not deemed to be overdue, and are not

discharged by being returned to the bank, but may be re-issued. They are not subject to the statutes of limitation or prescription, at least not until after demand and dishonour.

Any individual, firm or corporation, other than one of the banks to which the Act applies, which issues a note or other instrument intended to circulate as money is liable to a penalty of \$400: sec. 136.

Any person privy to a violation of the proviso in sub-section 1 is liable to imprisonment not exceeding seven years or to a fine not exceeding \$2,000 or to both: sec. 138.

There would appear to be a conflict between clause (*b*) of sub-section 1, and section 121. The latter provides that no by-law, regulation, resolution or act, touching the affairs or management of the bank, passed, made or done by the directors during the time the curator is in charge of the bank, shall be of any force or effect until approved by the curator. Clause (*b*) in effect provides that the bank may, after suspension, resume business without the consent in writing of the curator, but when it does so, it shall not issue or re-issue any of its notes until authorized by the Treasury Board to do so. The result probably is that the special provision overrides the general, and that the directors of the bank may resume business in spite of the curator; but before they can issue notes of the bank they must appeal to the Treasury Board and persuade it to overrule the curator.

The issuing of notes of the bank to a creditor in contemplation of its insolvency, so as to give such creditor an unfair preference under section 131, is made an offence under section 155, and renders the officer who grants or concurs in such issue liable to two years' imprisonment and to damages.

3. **Amount limited.**—Except as hereinafter provided, the total amount of the notes of a bank

in circulation at any time shall not exceed the aggregate of—

- (a) the amount of the unimpaired paid-up capital of the bank; and,
- (b) the amount of current gold coin and of Dominion notes held for the bank in the central gold reserves hereinafter mentioned. R. S. C., c. 29, s. 61, s.-s. 3. Am.

The words “ except as hereinafter provided ” and clause (b) of this sub-section, are new.

The banks were not satisfied with having the circulation of their notes limited to the amount of the unimpaired capital of the bank, even with the temporary increase authorized by the amending Acts, chapter 7 of 1908 and chapter 5 of 1912, during the season of moving the crops from the 1st of October to the 31st of January following, of 15 per cent of the combined unimpaired paid-up capital and reserve or rest fund of the bank.

To meet their wishes on this point the plan of “ central gold reserves ” mentioned in clause (b) of this sub-section, and elaborated in the succeeding thirteen sub-sections, was devised and inserted in the Act at the late revision. The Association mentioned in sub-section 4 is the Canadian Bankers’ Association, incorporated in 1900, chapter 93, whose Act of incorporation and by-laws are published in the Appendix.

The time for the increased issue of 15 per cent above mentioned was extended from the original four months to six months, namely, from the first of September in each year to the last day of February following.

The penalty for exceeding the limit prescribed by this sub-section varies according to the amount of the excess and is detailed in section 135.

4. **Central gold reserves.**—The Association may, with the approval of the Minister, appoint three trustees and the Minister may appoint a fourth trustee, and the trustees so appointed shall receive such amounts in current gold coin and Dominion notes, or either, as any bank may desire from time to time to deposit with them. The amounts so deposited are herein referred to as “central gold reserves” and shall be held and dealt with in accordance with the provisions of this Act.
5. The Association may make by-laws, rules and regulations under section 124 of this Act respecting the custody and management of the central gold reserves and the carrying out of the provisions of this Act relating to such reserves.
6. When and so long as the amount of the notes of a bank in circulation in excess of its unimpaired paid-up capital is less than the amount deposited by it in the central gold reserves, the excess of the amount so deposited shall belong to the bank as its property, and the bank may apply to the trustees for a return of the excess last mentioned, and upon receiving from the bank a statement signed by the chief accountant and by the general manager or other principal officer next in authority in the management of the affairs of the bank at the time the statement is signed, and otherwise in the form provided by said by-laws, rules or regulations, setting forth to the best of the information and belief of these officers the

amount of the notes of the bank in circulation on the date of such statement, the trustees shall return the whole or part of the deposit of the bank, as the case may be. On and from the date when such statement is transmitted by registered post or delivered to the trustees, the amount applied for shall, for the purpose of the statement to be made by the trustees to the Minister under sub-section 7 of this section, and for the purpose of calculating the total amount of the authorized note circulation of the bank, be deemed to have been withdrawn from the central gold reserves and shall not be taken into account in such statement nor included in such calculation; provided always that should the total amount of the notes of the bank in circulation be found, by reason of such withdrawal, to be in excess of the circulation of the bank authorized by this Act, the bank shall not be deemed to be released or relieved from any of the penalties imposed by this Act for circulation of the notes of a bank in excess of the amount authorized by this Act.

7. The trustees shall prepare and transmit by registered post or deliver to the Minister within the first twenty days of each month a statement to be signed by them showing the amount on each juridical day of the preceding month of the deposit of each bank in the central gold reserves and not withdrawn or deemed to be withdrawn under the provisions of this section.
8. The Minister shall, from time to time, and not less frequently than twice in each year, cause

an inspection and audit of the gold coin and Dominion notes held by the trustees to be made by officers of the Department of Finance.

9. It shall be the duty of such officers—

- (a) to inspect and ascertain the amount of the gold coin and Dominion notes held by the trustees for the respective banks at the date of inspection; and
- (b) to ascertain from the books and accounts, documents and vouchers of the trustees the amounts of gold coin and Dominion notes held by the trustees for the respective banks at any preceding date named by the Minister.

10. Every such officer shall have a right of access to the gold coin and Dominion notes held and to the books and accounts, documents and vouchers of the trustees, and shall be entitled to require from the trustees such information and explanation as may be necessary for the performance of his duties.

11. Should the bank become insolvent within the meaning of this Act, the amount held for it in the central gold reserves shall be paid by the trustees to the liquidator or other person entitled by law to collect and receive the assets of the bank and shall be applied in redeeming the notes of such bank in circulation and for no other purpose, or in making the payment to the Minister required by section 116 of this Act.

12. When a vacancy in the office of a trustee appointed by the Association occurs, by

resignation, death or other cause, the trustee to fill the vacancy shall, subject to the approval of the Minister, be appointed by the Association; and when a vacancy occurs in the office of a trustee appointed by the Minister, the trustee to fill the vacancy shall be appointed by the Minister.

13. The remuneration of trustees, including that of the trustee appointed by the Minister, and all charges and expenses incidental to the establishment and maintenance of the central gold reserves, shall be borne by the Association as the Association may, by by-law, rule or regulation, determine.
14. During the usual season of moving the crops, that is to say, from and including the first day of September in any year to and including the last day of February next ensuing, in addition to the said amount of notes hereinbefore authorized to be issued for circulation, the bank may issue its notes to an amount not exceeding fifteen per cent of the combined unimpaired paid-up capital and rest or reserve fund of the bank as stated in the statutory monthly return made by the bank to the Minister for the month immediately preceding that in which the additional amount is issued.
15. Whenever under the authority of the next preceding sub-section of this section, the issue of an additional amount of notes of the bank has been made, the general manager, or other principal officer next in authority in the management of the affairs of the bank for the time

- being, shall forthwith give notice thereof by registered letter addressed to the Minister and to the president of the Association.
16. While its notes in circulation are in excess of the aggregate referred to in sub-section 3 of this section, the bank shall pay interest to the Minister at such rate, not exceeding five per cent per annum, as is fixed by the Governor in Council, on the amount of its notes in circulation in excess from day to day; and the interest so paid shall form part of the Consolidated Revenue Fund.
 17. A return shall be made and sent by the bank to the Minister showing the amount of its notes in circulation for each juridical day during any month in which any amount of notes in excess of the amount of the unimpaired paid-up capital of the bank has been issued or is outstanding.
 18. Such return shall be made up and sent within the first thirty days after the last day of the month in which any such amount in excess has been issued or is outstanding, and shall be accompanied by declarations which shall be a part of the return, and the declarations shall be in the form set forth in Schedule E to this Act, and shall be signed by the chief accountant, and by the president or a vice-president or the director then acting as president, and by the general manager or other principal officer next in authority in the management of the affairs of the bank at the time at which the declaration is signed. New.

The foregoing sub-sections, 4 to 13 inclusive, are entirely new, and from 14 to 18 materially amended, and embody the details of the working of the scheme of the "Central gold reserves." By-laws under them were passed on the 26th of August, and approved on the 6th of September, 1913.

This scheme will relieve the banks from the very unfair position in which they sometimes found themselves when from unforeseen circumstances it happened that their circulation on a given day exceeded their paid-up capital. As this would be the aggregate result of the independent action of scores, or, in the case of the larger banks, of hundreds of branches possibly extending from the Atlantic to the Pacific and without any opportunity of their acting in concert, it was a hardship that the bank should be liable to the heavy penalties prescribed by section 135 for an accidental and unintentional excess of the prescribed limit.

Schedule E., printed at the close of this Act, provides for a return for each juridical day shewing (1) the paid-up capital of the bank, (2) the deposit of gold coin and Dominion notes, (3) the circulation, and (4) the excess (if any), and in addition for each day from the 1st of September to the end of February, the amount of the reserve fund.

Special provisions are made in the following sub-sections 19 and 20 for the Bank of British North America, which, under the provisions of its charter, could not comply with the provisions of the foregoing sub-sections, and whose shareholders are not subject to the double liability.

19. Notwithstanding anything in this section hereinbefore contained, the total amount of such notes of the Bank of British North America in circulation at any time shall not exceed the aggregate of seventy-five per cent

of the unimpaired paid-up capital of the bank, and the amount of current gold coin and of Dominion notes held by the bank in the central gold reserves; provided that the bank may, in lieu of current gold coin and Dominion notes, deposit with the trustees securities of the Dominion of Canada to an amount (taken at a valuation not greater than market value) not exceeding twenty-five per cent of the unimpaired paid-up capital of the bank, and such deposit of securities to the extent thereof shall be deemed to be, for the purposes of this section, a deposit of current gold coin and Dominion notes held by the trustees in the central gold reserves and shall be available in the event of the suspension of payment by the bank for the redemption of the notes of the bank.

20. The last mentioned bank may, during the said season of moving of crops, in addition to the circulation of its notes hereinbefore in the next preceding sub-section of this section authorized, issue its notes to an amount not exceeding ten per cent. of the combined unimpaired paid-up capital and rest or reserve fund of the bank as stated in the statutory return made by the bank for the month immediately preceding that in which the said additional amount is issued, and the said additional amount shall be otherwise subject to all the provisions of this section respecting circulation in addition to or in excess of the unimpaired paid-up capital permitted to the other banks. Am.

62. Issue of sterling notes.—Notwithstanding the provisions of the last preceding section any bank may issue and re-issue, at any branch, agency or office of the bank in any British colony or possession other than Canada, notes of the bank payable to bearer on demand and intended for circulation in such colony or possession, for the sum of one pound sterling each, or for any multiple of such sum, or for the sum of five dollars each, or for any multiple of such sum of the dollars in commercial use in such colony or possession, if the issue or re-issue of such notes is not forbidden by the laws of such colony or possession.

2. No issue of notes of the denomination of five such dollars, or any multiple thereof, shall be made in any such British colony or possession unless and until the Governor in Council, on the report of the Treasury Board, determines the rate, in Canadian currency, at which such notes shall be circulated as forming part of the total amount of the notes in circulation within the meaning of the last preceding section.
3. The notes so issued shall be redeemable at par at any branch, agency or office of the bank in the colony or possession in which they are issued for circulation, and not elsewhere, except as in this section specially provided; and the place of redemption of such notes shall be legibly printed or stamped across the face of each note so issued.
4. In the event of the bank ceasing to have a branch or agency or office in any such British

colony or possession, all notes issued in such colony or possession under the provisions of this section shall become payable and redeemable at the rate of four dollars and eighty-six and two-thirds cents per pound sterling, or, in the case of the issue of notes of the denomination of five dollars, or any multiple thereof, of the dollars in commercial use in such colony or possession, at the rate established by the Governor in Council as required by this section, in the same manner as notes of the bank issued in Canada are payable and redeemable.

5. The amount of the notes at any time in circulation in any such colony or possession, issued under the provisions of this section, shall, at the rate mentioned in the last preceding subsection, form part of the total amount of the notes in circulation within the meaning of the last preceding section, and, except as herein otherwise specially provided, shall be subject to all the provisions of this Act.
6. No notes issued for circulation in a British colony or possession other than Canada shall be re-issued in Canada.
7. Nothing in this section shall be construed to authorize any bank—
 - (a) to increase the total amount of its notes in circulation in Canada and elsewhere beyond the limit fixed by the last preceding section; or,
 - (b) to issue or re-issue in Canada notes payable to bearer on demand, and intended for

circulation, for a sum less than five dollars, or for a sum which is not a multiple of five dollars. 4 E. VII., c. 3, ss. 1, 2, 3 and 4.

The provisions of this section were first enacted in 1899, by 62 Vict. chap. 14, and amended and extended into its present form in 1904. The first bank to avail itself of the privilege was the Bank of Nova Scotia, which, in 1899, opened an office in Kingston, Jamaica. It has now eight branches in that island. The Royal Bank has eight branches in Jamaica, Barbados, the Bahamas, Trinidad, British Guiana and British Honduras.

This section does not apply to the Bank of British North America.

Before this section was first added to the Bank Act in 1899, Canadian banks had entered and were doing a banking business in Newfoundland. When the banks of that colony failed, the Government invited Canadian banks to open there, and chapter 28 of the Statutes of 1898 authorized the Governor-in-Council to fix the amount of notes they might issue, five dollars being the smallest denomination. In 1905, by chapter 8, every bank doing business there was required to send in annually a detailed statement of its business in the colony.

The notes issued in the colony are identical with those issued for circulation in Canada, and do not come under the provisions of this section being included in the returns sent to Ottawa. The banking business of the colony is practically done by Canadian banks, which have some 15 branches there.

63. Pledge of notes prohibited.—The bank shall not pledge, assign, or hypothecate its notes; and no advance or loan made on the security of the notes of a bank shall be recoverable from the bank or its assets. 53 V., c. 31, s. 52.

This section was first enacted in 1890, and was intended to prevent the repetition of irregularities which had taken place in connection with some of the banks that had failed shortly before that time.

The parties to such a transaction are liable to a fine of from \$400 to \$2,000, and to imprisonment for two years, or to both: sec. 139.

64. Bank Circulation Redemption Fund. — The moneys heretofore paid to and now deposited with the Minister by the banks to which this Act applies, constituting the fund known as the Bank Circulation Redemption Fund, shall continue to be held by the Minister for the purposes and subject to the provisions in this section mentioned and contained.

2. The Minister shall, upon the issue of a certificate under this Act authorizing a bank to issue notes and commence the business of banking, retain, out of any moneys of such bank then in his possession, the sum of five thousand dollars, which sum shall be held for the purposes of this section, until the annual adjustment hereinafter provided for takes place in the year then next following.
3. The amount at the credit of such bank shall, at such next annual adjustment, be adjusted by payment to or by the bank of such sum as is necessary to make the amount of money at the credit of the bank equal to five per cent of the average amount of its notes in circulation from the time it commenced business to the time of such adjustment and such sum shall

thereafter be adjusted annually as hereinafter provided.

4. The amounts heretofore and from time to time hereafter paid, to be retained and held by the Minister as by this section provided, shall continue to form and shall form the Circulation Fund.
5. The Circulation Fund shall continue to be held as heretofore for the sole purpose of payment, in the event of the suspension by a bank of payment in specie or Dominion notes of any of its liabilities as they accrue, of the notes then issued or re-issued by such bank, intended for circulation, and then in circulation, and interest thereon.
6. The Circulation Fund shall bear interest at the rate of three per cent per annum.
7. The Circulation Fund shall be adjusted, as soon as possible after the thirtieth day of June in each year, in such a way as to make the amount at the credit of each bank contributing thereto, unless herein otherwise specially provided, equal to five per cent of the average note circulation of such bank during the then last preceding twelve months.
8. The average note circulation of a bank during any period shall be determined from the average of the amount of its notes in circulation, as shown by the monthly returns for such period made by the bank to the Minister; and where, in any return the greatest amount of

notes in circulation at any time during the month is given, such amount shall, for the purposes of this section, be taken to be the amount of the notes of the bank in circulation during the month to which such return relates: Provided, however, that in determining the average note circulation of a bank under this subsection the daily average for each month of the amount of the bank's deposit (if any) in the central gold reserves which has not been withdrawn or deemed to be withdrawn within the meaning of this Act shall be deducted from the greatest amount of the notes of the bank in circulation at any time during the month.

9. The Minister shall, with respect to all notes paid out of the Circulation Fund, have the same rights as any other holder of notes of the bank: Provided that all such notes, and all interest thereon, so paid by the Minister, after the amount at the credit of such bank in the Circulation Fund, and all interest due or accruing due thereon, has been exhausted, shall bear interest, at the rate of three per cent per annum, from the time such notes and interest are paid until such notes and interest are repaid to the Minister by or out of the assets of such bank. 53 V., c. 31, s. 54; 63-64 V., c. 26, s. 13.

The Bank Circulation Redemption Fund was instituted in 1890, on the suggestion of the banks to ensure the prompt payment in full of all Canadian bank notes. Before 1880 the holders of such notes ranked concurrently with other ordinary creditors. In the Bank Act

of that year notes were made a first charge upon the assets. By the creation of the Fund in 1890 the banks guaranteed each other's notes to the extent of their respective contributions to the Fund.

The nucleus of the Fund is the \$5,000 retained from the \$250,000 paid in by a new bank to him in order to obtain a certificate to commence business: sec. 13. The amount at credit of the Fund at the end of the year ending June 30th, 1913, was \$6,456,104, which would be five per cent of the average note circulation of all the banks during the year.

The last sub-section was added by the amending Act of 1900.

65. Notes of suspended banks.—In the event of the suspension by a bank of payment in specie or Dominion notes of any of its liabilities as they accrue, the notes of the bank, issued or re-issued, intended for circulation, and then in circulation, shall bear interest at the rate of five per cent per annum, from the day of the suspension to such day as is named by the directors, or by the liquidator, receiver, assignee, or other proper official, for the payment thereof.

2. Notice of such day shall be given by advertisement in at least three consecutive issues of a daily newspaper, published in the place in which the chief office of the bank is situate, and if there is no daily newspaper published there, then by advertisement in two consecutive issues of any weekly newspaper published in that place.
3. If any notes presented for payment on or after any day named for payment thereof are not

paid, all notes then unpaid and in circulation shall continue to bear interest until such further day as is named for payment thereof, of which day notice shall be given in manner hereinbefore provided.

4. If the directors of the bank or the liquidator, receiver, assignee or other proper official fails to make arrangements within two months from the day of the suspension of payment by the bank, for the payment of all of its notes and interest thereon, the Minister may make arrangements for the payment out of the Circulation Fund, of the notes remaining unpaid and all interest thereon, and the Minister shall give such notice of the payment as he thinks expedient.
5. Notwithstanding anything herein, all interest upon such notes shall cease upon and from the date named by the Minister for such payment.
6. Nothing herein shall be construed to impose any liability upon the Government of Canada, or upon the Minister, beyond the amount available from time to time out of the Circulation Fund. 53 V., c. 31, s. 54; 63-64 V., c. 26, s. 11. Am.

In the Bank Act of 1890 the rate of interest on the notes of a suspended bank was six per cent. By section 11 of the amending Act of 1900 it was reduced to five per cent, the legal rate fixed by 63-64 Vict. chap. 29.

Sub-section 1 provides for interest on the notes of a suspended bank until the day named for their payment. Sub-section 2 prescribes the notice to be given of such

day. Interest would cease on that day if the bank is ready to pay.

The Winding-up Act, R. S. C. c. 144, s. 159, provides that a notice in the *Canada Gazette* and in the official gazette of each province and in two newspapers at the head office, one English and one French if the head office is in Quebec, shall be sufficient notice to holders of bank notes of any proceedings under that Act.

This matter of the payment of notes and the notice for the stoppage of interest, however, is not a proceeding under the Winding-up Act, but under the Bank Act; so that holders of such notes would not be entitled to claim a continuance of interest on account of the failure to give the notice prescribed in the Winding-up Act.

66. Payment from fund.—All payments made from the Circulation Fund shall be without regard to the amount contributed thereto by the bank in respect of whose notes the payments are made.

2. If the payments from the Circulation Fund exceed the amount contributed to the Circulation Fund by the bank so suspending payment, and all interest due or accruing due to such bank thereon, the other banks to which this Act applies shall, on demand, make good to the Circulation Fund the amount of the excess, proportionately to the amount which each such other bank had or should have contributed to the Circulation Fund, at the time of the suspension of the bank in respect of whose notes the payments are made: Provided that—

(a) each of such other banks shall only be called upon to make good to the Circulation Fund its

share of the excess in payments not exceeding, in any one year, one per cent of the average amount of its notes in circulation;

(*b*) such circulation shall be ascertained in such manner as the Minister decides; and,

(*c*) the Minister's decision shall be final.

3. All amounts recovered and received by the Minister from the bank on account of which such payments were made shall, after the amount of such excess has been made good as aforesaid, be distributed among the banks contributing to make good such excess, proportionately to the amount contributed by each. 53 V., c. 31, s. 54; 63-64 V., c. 26, s. 12.

67. Refund of deposit.—In the event of the winding-up of the business of a bank by reason of insolvency or otherwise, the Treasury Board may, on the application of the directors, or of the liquidator, receiver, assignee or other proper official, and on being satisfied that proper arrangements have been made for the payment of the notes of the bank and any interest thereon, pay over to the directors, liquidator, receiver, assignee or other proper official, the amount of the Circulation Fund at the credit of the bank, or such portion thereof as it thinks expedient. 53 V., c. 31, s. 54.

68. Rules and regulations.—The Treasury Board may make all such rules and regulations as it thinks expedient with reference to—

- (a) the payment of any moneys out of the Circulation Fund, and the manner, place and time of such payment;
- (b) the collection of all amounts due to the Circulation Fund;
- (c) all accounts to be kept in connection therewith; and,
- (d) generally the management of the Circulation Fund and all matters relating thereto. 53 V., c. 31, s. 54.

No rules or regulations under this section have been made.

69. Enforcement of payments. — The Minister may, in his official name, by action in the Exchequer Court of Canada, enforce payment, with costs of action, of any sum due and payable by any bank which should form part of the Circulation Fund. 53 V., c. 31, s. 54.

70. Redemption of notes.—The bank shall make such arrangements as are necessary to ensure the circulation at par, in any and every part of Canada, of all notes issued or re-issued by it and intended for circulation; and towards this purpose the bank shall establish agencies for the redemption and payment of its notes at Toronto, Montreal, Halifax, St. John, Winnipeg, Victoria, Charlottetown, Regina and Calgary, and at such other places as are, from time to time, designated by the Treasury Board. 53 V., c. 31, s. 55. Am.

This provision was first made in 1890. Before that time notes of a bank were sometimes subject to a small discount in places remote from any of its offices. The enactment has secured the circulation at par in every part of Canada of the notes of all the banks. Regina and Calgary are named for the first time. These places are the same as those named in section 60 for the delivery and redemption of Dominion notes. One place is named in each of the nine provinces of the Dominion where a bank must arrange to redeem and pay its notes, whether it has an office or agency in that province or not. Where banks have offices and issue notes as in Newfoundland and the West Indies, this point will be governed by the local laws. The notes referred to in this section are only the notes intended for circulation in Canada, not the sterling or other notes intended for circulation only in other British possessions. These latter are redeemable only in the colony or possession in which they were issued: sec. 62, s.-s. 3.

No other place has yet been named by the Treasury Board for the redemption and payment of bank notes.

71. Bank must take its own notes. — The bank shall always receive in payment its own notes at par at any of its branches, agencies, or offices, and whether they are made payable there or not. 53 V., c. 31, s. 56. Am.

This section has been amended by the addition of the words “ branches, agencies or,” but the meaning has not been changed. It refers to the reception of its notes at par at any of its branches, agencies or offices, from a debtor who is making a payment to the bank. Notwithstanding the very general language of the section, it was probably not intended to compel a bank to accept payment of a large debt, say in London or New York, in notes issued under section 62, and intended only for some remote British colony or possession, or even to compel it to accept payment there in notes intended for

circulation in Canada. It would probably be restricted to bills issued to be circulated in the country where the debt was payable. As a matter of courtesy to customers, it is probable that a bank would accept a reasonable amount of such bills from a customer even if they were not legally bound to do so, and the question is not at all likely to arise.

There was a second sub-section which read: "The chief place of business of the bank shall be one of the places at which its notes are made payable." This was probably omitted as being unnecessary. Bank notes for circulation in Canada are made payable generally, and as promissory notes of the bank would be payable at its chief place of business without any declaration to that effect. It will be observed that, with regard to the special notes authorized by section 62, sub-section 3 provides that such notes shall be redeemable at par at any branch, agency or office of the bank in the colony or possession in which they are issued for circulation and not elsewhere, but it does not say that they need not be received at par in payment elsewhere.

72. Payment in Dominion notes.—The bank, when making any payment shall, on the request of the person to whom the payment is to be made, pay the same, or such part thereof, not exceeding one hundred dollars, as such person requests, in Dominion notes for one, two, or five dollars each, at the option of such person.

2. No payment, whether in Dominion notes or bank notes, shall be made by the bank in bills that are unclean or torn or partially defaced by excessive handling.
3. The Treasury Board may make regulations providing for the disinfection and sterilization by the several banks of all bank notes and

Dominion notes which have come into the bank's possession before a re-issue thereof to the public; and the bank, its officers, clerks and servants, shall carry out and execute the regulations made under the authority of this section. 53 V., c. 31, s. 57. Am.

In sub-section 1 the word " five " has been substituted for " four ; " in sub-section 2 the word " unclean " has been inserted, and sub-section 3 has been added.

Bank notes are not a legal tender, and even without the first sub-section any person receiving payment from a bank could require payment in legal tender: 9-10 E. VII. c. 14, and R. S. C. c. 27, s. 3. The section will probably be construed to mean that the person receiving payment may require one hundred dollars or less in Dominion notes of the denominations mentioned.

73. Bills or notes not under seal.—The bills or notes of the bank signed by the president, a vice-president, the general manager or other officer appointed by the directors of the bank to sign the same, promising the payment of money to any person, or to his order, or to the bearer, though not under the corporate seal of the bank, shall be binding and obligatory on the bank, in like manner and with the like force and effect as they would be upon any private person, if issued by him in his private or natural capacity, and shall be assignable in like manner as if they were so issued by a private person in his natural capacity.

2. The directors of the bank may, from time to time, authorize or depute the general manager, a manager or other officer of the bank, or any

director other than the president or a vice-president, or any manager of any branch or office of discount and deposit of the bank, to sign the notes of the bank intended for circulation. 53 V., c. 31, s. 58. Am.

This section was recast and modernized at the late revision. It had come down from 1871, and its language was quaint and archaic. It spoke of "bonds, obligations and bills, obligatory or of credit," and of the "cashier or assistant cashier" as the officers of the bank to execute these instruments. The names have been replaced by the current modern designations of the officers of the banks, the title of "cashier" being obsolete, so far as Canadian banks are concerned.

The first sub-section of the old section, which made the instruments named assignable by endorsement, was omitted as unnecessary, in view of the provisions of the Bills of Exchange Act as to these negotiable instruments.

As it now stands the section simply places the bank in the same position as a private person with respect to bills or notes, and dispenses with the necessity for a seal to bind it as a corporation. Such instruments are placed on the same footing as similar paper issued by a private person, and if they meet the requirements of the definition of a bill of exchange or promissory note would come under section 21 of the Bills of Exchange Act, which provides that "When a bill contains words prohibiting transfer or indicating an intention that it should not be transferable, it is valid as between the parties, but is not negotiable."

Take for example an ordinary bank deposit receipt without the seal of the bank, payable to a person named. If it contains the words, "Not transferable," or other words to that effect, it is not a negotiable instrument and is not transferable by delivery or indorsement. It would be a chose in action, and would require to be

assigned in writing, either on the document itself or by a separate instrument, in order to give the assignee the right to sue in his own name, according to the law of the respective provinces. See R. S. O. 1914, chap. 109, sec. 49 (1); R. S. N. S. chap. 155, sec. 19 (5); C. S. N. B. chap. 111, sec. 155; R. S. Man. chap. 40, sec. 39 (e); Cons. Ord. N. W. T. chap. 41; R. S. Sask. chap. 146; R. S. B. C. chap. 56, sec. 16 (17). In Quebec it would come under Articles 1570 and 1571 of the Civil Code, which would require that a copy of the instrument of sale should be served on the bank. Its not being a negotiable instrument would also prevent any holder acquiring greater rights under it than possessed by the first holder: *Bank of Toronto v. St. Lawrence Fire Ins. Co.*, [1903] A. C. 59; *Sorel v. Quebec Southern Ry. Co.*, 36 S. C. Can. 686 (1905).

74. Signing by machinery.—All bank notes and bills whereon the name of any person entrusted or authorized to sign such notes or bills on behalf of the bank is impressed by machinery provided for that purpose, by or with the authority of the bank, shall be good and valid to all intents and purposes, as if such notes and bills had been subscribed in the proper handwriting of the person entrusted or authorized by the bank to sign the same respectively, and shall be bank notes and bills within the meaning of all laws and statutes whatever, and may be described as bank notes or bills in all indictments and civil or criminal proceedings whatever: Provided that if all such names are impressed by machinery, at least one such name to each note or bill, together with a distinguishing device and number, shall be impressed or engraved under

the authority of the bank after the notes are received by the bank from the engraver and printer, and shall not be otherwise impressed or engraved. 53 V., c. 31, s. 29. Am.

The proviso to this section is new, replacing one requiring one of the signatures to be written.

75. Counterfeit notes. — Every officer charged with the receipt or disbursement of public moneys, and every officer of any bank, and every person acting as or employed by any banker, shall stamp or write in plain letters, upon every counterfeit or fraudulent note issued in the form of a Dominion or bank note, and intended to circulate as money, which is presented to him at his place of business, the word “Counterfeit,” “Altered” or “Worthless.”

2. If such officer or person wrongfully stamps any genuine note he shall, upon presentation, redeem it at the face value thereof. 53 V., c. 31, s. 62.

BUSINESS AND POWERS OF THE BANK.

The legal relation between a bank and its customers in their ordinary dealings is simply that of debtor and creditor. Money paid into a bank or placed to the credit of a customer in the books of a bank is not impressed with any trust, and there is nothing of a fiduciary nature in the relation between the parties. The obligation of the bank is to pay a like amount to the customer's use on an order from him by a cheque or otherwise as may have been arranged between the parties.

Canadian banks are Banks of Issue, of Discount and of Deposit. The sections relating to them as Banks of

Issue are those from 61 to 75 inclusive. The following sections from 76 to 94, inclusive, regulate and govern their operations as Banks of Discount, while section 95 relates to them as Banks of Deposit.

Apart from issuing notes for circulation as money, and receiving deposits, it may be said in a general way that banks are only authorized to deal in money and documents for the payment of money. These latter they may buy, sell, discount, lend money upon, or take as collateral security for loans. Except as authorized by the Act they are prohibited from dealing in goods or lands, or lending money directly upon their security. Section 76 lays down these powers in a general way; 77 gives banks a lien upon the stock and dividends of its debtors; 78 prescribes how they may deal with collateral securities; 80 with mortgages taken as additional security; 79, 81, 82 and 83 with lands; 84 with standing timber and timber licenses; 85 with mortgages on vessels; and 86 to 90 inclusive, with warehouse receipts, bills of lading and analogous securities.

76. The bank may,—

- (a) open branches, agencies and offices;
- (b) engage in and carry on business as a dealer in gold and silver coin and bullion;
- (c) deal in, discount and lend money and make advances upon the security of, and take as collateral security for any loan made by it, bills of exchange, promissory notes and other negotiable securities, or the stock, bonds, debentures and obligations of municipal and other corporations, whether secured by mortgage or otherwise, or Dominion, provincial, British, foreign, and other public securities; and,

- (d) engage in and carry on such business generally as appertains to the business of banking.
53 V., c. 34, s. 64.

Branches and agencies within the meaning of this and other sections of the Act are those offices which the bank establishes and maintains in Canada or other countries in premises used by the bank for a banking business in charge of its officers, clerks and servants. The name of agency is now seldom used for such offices, except where special reasons exist under local and state laws, as in New York, where the business is done in the name of the agents and not in the corporate name of the bank.

Where a bank makes arrangements with another bank or banker, where it has no branch, to honor its drafts, make its collections, etc., for a commission or other consideration, its office would not be a branch or agency of the Canadian bank; but the title of correspondent is usually applied to such a banker, although he is sometimes popularly called an agent.

Branches.—The system of Branch Banks adopted in Canada was borrowed from Scotland. It has been greatly extended of recent years, so that they had 3,028 branches in October, 1913. Of these there are in Canada, 2,943; in Newfoundland, 15; in Great Britain, 7; in the United States, 14; in the West Indies and Central and South America, 46; and in other countries, 3. Most of the larger banks have branches throughout the Dominion, and even the smaller ones have adopted the same policy.

For some purposes a branch is treated as an independent institution, but for most purposes it is considered as an integral part of the main body.

For the payment of cheques it is considered as distinct from the head office or other branches. A customer at one branch is not entitled to present a cheque except at the branch where his account is kept. If it is cashed at another branch for a holder, all parties are in the same

position as though it was on another bank: *Woodland v. Fear*, 7 E. & B. 519 (1857).

The same principle applies as to notice of dishonor or protest. Each branch indorsing has a day to send notice to the next preceding indorser: *Clode v. Bayley*, 12 M. & W. 51 (1843); *Prince v. Oriental Bank*, L. R. 3 A. C. at p. 332 (1878); *Steinhoff v. Merchants' Bank*, 46 U. C. Q. B. 25 (1881); *The Queen v. Bank of Montreal*, 1 Exch. Can. 154 (1886); *Fielding v. Corry*, [1898] 1 Q. B. 268; *Rex v. Lovitt*, [1912] A. C. at p. 219.

A branch cannot keep open after receiving notice that the head office has suspended payment; but until such notice is received its authority to do business is not revoked: *Brunelle v. Ostigny*, Q. R. 21 K. B. 302 (1911).

But for most purposes a bank and its branches are in law held to be one. Where notice affects the liability of a bank, it is not necessary that it should be given to all the branches. It is sufficient to give notice at the head office, and this will be good against all the branches after a sufficient time has elapsed to allow of its being sent from the head office to the branches: *Willis v. Bank of England*, 4 A. & E. 21 (1835).

Inasmuch as all the branches of a bank form part of one corporation a draft by one branch upon another is not a bill of exchange or cheque within the meaning of the Bills of Exchange Act, which requires an instrument to be drawn upon one person by another. In the foregoing case the drawer and drawee would in law be the same person.

Another result of treating a head office and a branch as one, is, that entries of sums transferred or transmitted are on the same footing as entries in the same office. A note was paid in at the head office and transmitted to a branch where it was payable, and the signature there cancelled. The head office was notified and the amount

credited; but before the customer was advised it was discovered that the note should not have been marked paid. It was marked "cancelled in error" and the entries reversed. Held, that the bank had a right to do so: *Prince v. Oriental Bank*, L. R. 3 A. C. 325 (1878). See also *Simson v. Ingham*, 2 B. & C. 65 (1823); *Irwin v. Bank of Montreal*, 38 U. C. Q. B. 375 (1876); *Bain v. Torrance*, 1 Man. R. 32 (1884).

Another result of this principle is that if a customer has accounts at two or more branches, the bank may consolidate them, and a cheque may be refused when there appears to be money to his credit, if upon the whole there are not sufficient funds: *Garnett v. McKewan*, L. R. 8 Ex. 10 (1872); *Prince v. Oriental Bank*, 3 A. C. at p. 333 (1878); *Teale v. Brown*, 11 T. L. R. 56 (1894).

A bank is bound to know the amounts of its own drafts, and if one branch pays a draft drawn by another branch, the amount of which had been fraudulently raised, the bank cannot recover the money from the holder who has acted in good faith: *Union Bank v. Ontario Bank*, 9 R. L. 631 (1879).

Where a bank has its head office in another province, but has a branch in Ontario, it is deemed to be resident within Ontario, and moneys deposited at a branch in that province may be attached as debts due to the depositors: *Wentworth v. Smith*, 15 Ont. Pr. R. 372 (1893).

The bank as a dealer.—In the Bank Act, R. S. C. (1886) chapter 120, it was provided by section 45, that a bank should not engage "in any trade whatsoever except as a dealer in gold and silver bullion, bills of exchange, discounting of promissory notes and negotiable securities, and in such trade generally as appertains to the business of banking." It will be seen that the terms of the present Act are more specific, and that in addition to its rights to discount, lend money, make advances, and take certain collateral securities, which will be considered further on, a bank is given express power to deal "in

gold and silver coin and bullion, bills of exchange, promissory notes and other negotiable securities or the stock, bonds, debentures and obligations of municipal and other corporations, whether secured by mortgage or otherwise, or Dominion, Provincial, British, foreign, and other public securities.”

“ Dealing ” in these instruments and securities, as contra-distinguished from discounting or lending money or making advances on them, would ordinarily mean buying and selling them outright without an indorsement of them by the customer, or with an indorsement “ without recourse ” when they are made payable to his order. This is the usual way in which these instruments and securities, except bills of exchange and promissory notes, are disposed of. In that event the seller simply warrants that they are genuine and that he has a right to transfer them, and that he is not aware at the time that they are valueless; practically the same warranties as if he was selling coin or bullion. Bills of Exchange Act, sec. 138; *Montgomery v. Ryan*, 16 O. L. R. at p. 98 (1908); *Lewis v. Jeffrey*, M. L. R. 7 Q. B. 141 (1875); *Jones v. Ryde*, 5 Taunt. 488 (1814); *Allen v. Sharp*, 17 L. J. Ex. at p. 212 (1848); *Gompertz v. Bartlett*, 2 E. & B. 489 (1853); *Gurney v. Womersley*, 4 E. & B. 139 (1854); *Nichols v. Fearson*, 7 Peters (U. S.) 103 (1833).

The Bank Act of 1871 contained a provision similar to that quoted above from R. S. C. (1886) chap. 120. Like the latter, it also authorized a bank to acquire and hold corporation bonds and debentures as collateral security and to realize upon them. It was held that this authorized a bank not only to lend money on these securities, but also to purchase them absolutely. *Jones v. Imperial Bank*, 23 Grant 269 (1876).

“ Other securities ” in this section means securities of the same kind as those mentioned, namely, similar to bills of exchange and promissory notes. It would probably be held to include cheques, bonds payable to bearer

or to a person named or order, negotiable deposit receipts and the like.

Discounts.—By this section a bank is authorized to discount “bills of exchange, promissory notes and other negotiable securities, or the stock, bonds, debentures and obligations of municipal corporations, or Dominion, Provincial, British, foreign, and other public securities.” When a bank discounts a negotiable instrument it really becomes the purchaser, and the instrument becomes a part of its assets. The expression “discounting” is not, however, usually applied to the acquisition of such bonds, debentures and public securities. As a rule they are either bought without the seller’s indorsement or they are received by the bank as collateral security. “Discounting” is usually applied to bills of exchange and promissory notes not yet due, and which the bank acquires from the drawer or indorser, crediting him with the face of the instrument less the discount for the time it has to run. If the customer does not indorse it, it is a simple sale, and the seller only warrants its genuineness, and is not responsible if the maker or acceptor does not meet it or subsequently becomes insolvent; *Gurney v. Womersley*, 4 E. & B. 133 (1854).

“Discounting is purchasing, not lending. The discounter, whether of a bill or a bond or any other security, becomes the owner. If the thing bought turns out to be of less value than the price paid for it, the loss falls upon the purchaser or discounter,” per Bacon, V.C., in *London Financial Association v. Kelk*, 26 Ch. D. at p. 134 (1884).

Usually, however, the customer indorses the bill or note discounted by a bank. This transaction is sometimes spoken of as the bank lending him money on the security of the instrument; but such is not its real nature. It is in effect a sale with warranty. The bill or note becomes the property of the bank, absolutely, and it agrees to look in the first instance to the acceptor or maker for payment, and only to the customer in case of their default of payment at maturity and notice to him

of such default: *Carstairs v. Bates*, 3 Camp. 301 (1812); *Morley v. Culverwell*, 7 M. & W. 174 (1840); *Rouquette v. Overmann*, L. R. 10 Q. B. 525 (1875); *Re Gomersall*, 1 Ch. D. 142 (1875); *Re Hallett & Co.* [1894] 2 Q. B. 256.

A bank may discount a cheque as well as a bill or note. If this is done without getting the customer's indorsement he cannot be sued upon it or directly for the money advanced him. When a cheque drawn upon one branch of a bank was presented for payment at another branch where the holder was known to the officers and they cashed it for him, it was held that the cheque was cashed on the credit of the holder, and that the bank was, on its dishonor, entitled to charge him with the money he received. *Woodland v. Fear*, 7 E. & B. 519 (1857).

While discounted bills are current the bank has no lien on the customer's cash balance, and ought not to dishonor his cheques during that time, if the account is in funds: *Bower v. Foreign Gas Co.*, 22 W. R. 740 (1874). Where a bill is dishonored, the bank can, if it is indorsed by the customer and notice of dishonor is given, charge it up to the customer's account.

As a discounted bill is the property of the bank, it follows that if it is accidentally destroyed or lost, the loss falls on the bank: *Carstairs v. Bates*, 3 Camp. 301 (1812).

Where the bank agreed with an indorser, who was a surety for contractors, that all moneys earned should apply on the discounted paper, and the bank without his consent applied some of the moneys otherwise, the surety was held to be discharged: *O'Gara v. Union Bank*, 22 S. C. Can. 404 (1893).

Where a customer gave a bank a bill of exchange to discount, it had no right to keep the bill and apply the proceeds on his former indebtedness without his consent: *Landry v. Bank of Nova Scotia*, 29 N. B. 564 (1889); *Fleckner v. Bank of U. S.*, 8 Wheaton 338 (1823).

Collateral security.—A bank may not only discount the negotiable instruments named in this section, but may also make advances upon them, and take them as collateral or further security for loans made by it. There is this difference to be noted between discounting and taking as collateral security. The former, as already stated, is a selling, and the instrument discounted becomes the property of the bank. The latter is rather a pledging or hypothecating of the instrument, which remains the property of the customer, but is subject to the lien of the bank for the amount of the advances or loan, with interest and any other accessory charges. If such an instrument should be lost or destroyed, without negligence, the loss, if any, would fall on the customer and not on the bank. It is not strictly a secondary security, but is concurrent with the principal obligation although subsidiary to it.

When a bank receives as collateral security a negotiable instrument which is payable to bearer, or is indorsed in blank or indorsed in its favour, it becomes the holder of the paper within the meaning of the Bills of Exchange Act, and can exercise all the rights of a holder, one of which is that it may sue upon it in its own name. Such a pledging is a negotiation of the instrument: Bills of Exchange Act, sec. 60. When the bank so acquires it before maturity, in good faith, without notice of any defect in the title of the customer, it holds it free from any defect of title of prior parties: *Ibid.* sec. 56.

The bank can sue upon such paper when it becomes due, and before the maturity of the debt for the security of which it was given as collateral: *Shaw v. Crawford*, 16 U. C. Q. B. 101 (1857); *Ross v. Tyson*, 19 U. C. C. P. 294 (1869); *Ward v. Quebec Bank*, Q. R. 3 Q. B. 122 (1894).

If it realize more than its debt from its collaterals or otherwise, it holds the surplus as a trustee for the customer, who is entitled to it, and also to the surrender of any collaterals on hand after payment of the debt.

The bank is liable if it does not exercise due diligence in presenting such collateral paper for payment and giving notice to indorsers in case of non-payment: *Peacock v. Pursell*, 14 C. B. N. S. 728 (1863); *Browne v. Commercial Bank*, 10 U. C. Q. B. 129 (1852); *Ryan v. McConnell*, 18 O. R. 409 (1889); *Union Bank v. Elliott*, 14 Man. R. 187 (1902).

A power of attorney to sell, dispose of, assign and transfer promissory notes does not give the right to pledge them as security for a loan: *Jonmenjoy v. Watson*, 9 App. Cas. 561 (1884).

Where a bank took a note indorsed by a customer as collateral security for past advances amounting to \$10,000, and after the maturity of this note deposits amounting to more than \$100,000 were passed to his credit in the books of the bank, it was held that in the absence of any agreement as to the imputation of payments, they would be applied to the oldest debt, and the collateral was discharged, the bank having no claim on the maker or the customer who indorsed it: *Exchange Bank v. Nowell*, M. L. R. 3 S. C. 129 (1887).

A letter of guarantee was given to secure advances on certain accepted drafts discounted by a bank. It was declared to be a continuing guarantee. The drafts were renewed. It was held that the guarantee covered the renewals, although renewals were not expressly mentioned: *Brush v. Molsons Bank*, Q. R. 3 Q. B. 12 (1893). The expression "collateral security" is sometimes used in the sense of a secondary, but ordinarily in the sense of a primary security: *Athill v. Athill*, 16 Ch. D. 211 (1880).

Where a bank has received as collateral security bills or notes or other securities, and also holds liable some person who may occupy the position of a surety, care should be exercised in dealing with such securities if the surety is to be held responsible. The law of Quebec on the subject is expressed in Article 1959 of the Civil Code:

“The suretyship is at an end when by the act of the creditor the surety can no longer be subrogated in the rights, hypothecs and privileges of such creditor.” This also expresses the law in the other provinces where the English law prevails.

In the case of the *Central Bank v. Garland*, 20 O. R. 142 (1890), goods were sold for which the purchasers gave their notes and also hire receipts, by which the property remained in the vendor until the goods were paid for. These notes were discounted through a third party, and the bank was aware of the hire receipts being taken, but there was no express contract in regard to them. It was held that the hire receipts were accessory to the debt, and that the bank was entitled to recover them from the assignee of the vendor. This case was affirmed on appeal: 18 Ont. A. R. 438 (1891).

A promissory note was given in payment of the price of some real estate and was secured by mortgage on the property. The note was indorsed to the Quebec Bank. It was held that under Articles 1573 and 1574 of the Civil Code the bank became entitled to the mortgage without signification of the transfer and could even bring an hypothecary action against the holder of the mortgaged property: *Quebec Bank v. Bergeron*, 11 Q. L. R. 368 (1885).

The law in Ontario as to the right of the surety who pays to get an assignment of the securities held by the bank is contained in section 3 of the Mercantile Amendment Act, 10 Edw. VII., chap. 63, which reads as follows: “Every person who being surety for the debt or duty of another, or being liable with another for any debt or duty, pays the debt or performs the duty, shall be entitled to have assigned to him, or to a trustee for him, every judgment, specialty, or other security which is held by the creditor in respect of such debt or duty, whether such judgment, specialty or other security be or be not deemed at law to have been satisfied by the

payment of the debt or the performance of the duty.” The Civil Code of Quebec is to the same effect: “ Art. 1950. The surety who has paid the debt is subrogated in all the rights which the creditor had against the debtor.”

A bank received the note of a third party as collateral security for a \$200 note which it discounted. On maturity of this latter note the maker paid \$25 and gave his note for \$175. This did not relieve the maker of the note given as collateral: *Canadian Bank of Commerce v. Woodward*, 8 Ont. A. R. 347 (1883).

When timber limits given to a bank as collateral security were offered at auction and withdrawn, and subsequently sold at private sale for what was held to be a grossly inadequate price, the bank was held liable for the difference between the sum obtained and the real value of the limits: *Prentice v. Consolidated Bank*, 13 Ont. A. R. 69 (1886).

If a bank agrees to give a customer a line of credit, accepting negotiable paper as collateral, it is not obliged, so long as the paper remains uncollected, to give any credit in respect of it; but when any portion of the collaterals is paid, it operates at once as payment of so much of the customer's debt, and must be credited to him: *Cooper v. Molsons Bank*, 26 S. C. Can. 611 (1896). Affirmed in Privy Council, 26 A. R. 571 (1898); 14 T. L. R. 276. A bank on discounting a note received collateral security from a third party, on condition that it would use diligence in collecting the note. It renewed the note and released one of the indorsers for a consideration. The depositor of the collateral sued for and recovered it: *Banque du Peuple v. Pacaud*, Q. R. 2 Q. B. 424 (1893).

NEGOTIABLE INSTRUMENTS.

This section authorizes banks to deal in bills of exchange, promissory notes and other “ negotiable securities.” The expression “ negotiable securities ” or “ negotiable instruments ” is used in two senses. It is

frequently used to describe any written security which may be transferred by indorsement and delivery, or by delivery alone, so as to vest in the holder the legal title, and thus enable him to sue upon it in his own name. In a narrower and more technical sense it applies only to those instruments which, like bills of exchange, by indorsement, or delivery before maturity, vest in the *bona fide* holder for value not only the rights of the transferrer, but the right to claim the full amount for which the instrument is drawn: *Goodwin v. Roberts*, L. R. 10 Ex. 337, 1 A. C. 476 (1875); *Crouch v. Credit Foncier*, L. R. 8 Q. B. at p. 381 (1873); *London Joint Stock Bank v. Simmons*, [1892] A. C. 201; *Bentinck v. London Joint Stock Bank*, [1893] 2 Ch. 120.

The expression would seem to have been used in this section in the latter sense as there is added "or the stock, bonds, debentures, and obligations of municipal and other corporations, or Dominion, Provincial, British, foreign and other public securities," some of which would come within the former meaning. All of these when in their usual form, except "stock" when used to designate capital or shares, would be negotiable instruments in the wider sense; while some of them may come within that designation in the narrower or more technical sense. In the broader meaning it would include warehouse receipts and bills of lading, which it is evident from subsequent sections were not intended to be included. The powers conferred by the present section were evidently intended to be confined to money and securities for money.

Bills and notes.—Bills of exchange and promissory notes both had a negotiable quality by the law merchant, and they have always been recognized as such in Canada, as well in the Province of Quebec through the French law, as in those provinces which derived their laws from England. By far the largest part of the business of our Canadian banks is in the discounting of bills and notes.

For questions which may arise in connection with them the reader is referred to the Bills of Exchange Act, and works on that subject.

Cheques.—A cheque is defined by section 165 of the Bills of Exchange Act as a bill of exchange drawn on a bank, payable on demand. Cheques are negotiable in the same sense and to the same extent as bills or notes. Being intended for immediate payment, and not bearing interest, they are seldom dealt in as negotiable securities. As a rule, banks receive cheques on other banks or on their own branches only for collection.

For the law on the subject of cheques, the reader is referred to that portion of the Bills of Exchange Act and the notes thereon, which is found in the present work following the schedules to this Act.

Bank deposit receipts.—The instruments of this class which were considered in the earlier Canadian cases were not made payable to order or bearer, and so were held not to be negotiable instruments under the law relating to promissory notes as it then stood, so as to enable the holder by indorsement or delivery to recover in his own name. See *Mander v. Royal Canadian Bank*, 20 U. C. C. P. 125 (1869); *Bank of Montreal v. Little*, 17 Grant 313 (1870); *Lee v. Bank B. N. A.*, 30 U. C. C. P. 255 (1879); followed in *Armour v. Imperial Bank*, 15 C. L. J. 391 (1895). In *Voyer v. Richer*, 13 L. C. J. 213 (1869), the Quebec Courts held that even when the receipt was payable to order it was not negotiable. In the Privy Council, L. R. 5 P. C. 461 (1874), it was said that there was “high authority in favour of considering it to be negotiable,” but the case was decided on another ground. In *Re Central Bank*, 17 O. R. 574 (1889), it was held that the bank which had issued such a receipt, payable to order, was estopped from denying its negotiable character. Under section 21 of the Bills of Exchange Act, if such a receipt contains words prohibiting transfer or indicating an intention that it should not be

transferable, it would not be a negotiable instrument, but would be a chose in action and require to be assigned in writing, in accordance with the provincial law: *In re Commercial Bank of Manitoba, Barkwell's Claim*, 11 Man. R. 494 (1897).

A Minnesota bank deposit receipt held to be a negotiable instrument on evidence that it was negotiable in that State and that in the absence of evidence as to when payable and protest, it would be governed by the *lex fori*: *Security National Bank v. Pritt*, 14 W. L. R. (Sask.) 216 (1910).

Such words would not prevent the depositor from thus transferring the receipt and enabling the transferee to draw the money. It would prevent its being transferred by indorsement or delivery under the law merchant or the Bills of Exchange Act, and would prevent the transferee from acquiring any greater rights than the transferrer had. It would enable the bank to set up against the holder any equities it might have against the depositor prior to the transfer.

Such receipts have been held in the United States to be negotiable instruments: *Miller v. Austin*, 13 Howard, U. S. 218 (1851).

They may also be the subject matter of a good *donatio mortis causa*: *Hewitt v. Kaye*, L. R. 6 Eq. 198 (1868); *In re Mead*, 15 Ch. D. 651 (1880); *In re Dillon*, 44 Ch. D. 76 (1890).

Municipal debentures.—Banks are also authorized to deal in the stock, bonds, debentures, and obligations of municipal corporations, to discount them, to lend money and make advances upon their security, and to take them as collateral security for loans. Nor are they restricted to those issued by municipal bodies in Canada. Care, however, should be taken to see that they are authorized by statute, and that the requirements of the statutes under which they purport to have been issued have been complied with.

Where the power to issue debentures for a given purpose exists, but there has been some irregularity in connection with the passing of the by-law or non-compliance with certain directions, the corporation is estopped from denying the validity of the debentures in the hands of a *bona fide* holder: *Webb v. Commissioners of Herne Bay*, L. R. 5 Q. B. 642 (1870); *Confederation Life v. Howard*, 25 O. R. 197 (1894); *Board of Knox Co. v. Aspinwall*, 21 Howard (U. S.) 539 (1858); *Supervisors v. Schenk*, 5 Wallace (U. S.) 772 (1865); *Pendleton County v. Amy*, 13 Wallace (U. S.) 297 (1871).

Where, however, the debenture refers to a by-law and the by-law on its face shows that it is for a purpose not authorized by law, the debenture is invalid: *Confederation Life v. Howard*, 25 O. R. 197 (1894); *Wiltshire v. Surrey*, 2 B. C. R. 79 (1891); *Marsh v. Fullton County*, 10 Wallace (U. S.) 676 (1870).

Money paid for worthless debentures can be recovered back, as money paid without consideration, or for a consideration that has failed: *Straton v. Rastall*, 2 T. R. 366 (1788); *Young v. Cole*, 3 Bing. N. C. 724 (1837); *Confederation Life v. Howard*, 25 O. R. 197 (1894).

In 1855 by the Act of the old Province of Canada, 18 Vict. chap. 80, municipal debentures issued in Upper or Lower Canada, payable to bearer, were declared to be transferable by delivery, and those payable to any person or order, by indorsement; the holder for the time being having the right to sue in his own name, and his title not being liable to be impeached if he was a *bona fide* holder for value without notice.

Similar provisions are found in the municipal Acts now in force in most of the provinces of the Dominion. See the Ontario Municipal Act, R. S. O. 1914, c. 192, secs. 314 to 318; Municipal Code, Quebec, Arts. 981 to 987; R. S. Q. Arts. 4629, 4630; also the special Acts of incorporation of the respective cities in the Province of Quebec; Con. Stat. N. B. 1903, c. 169, sec. 1; Stat. Man., 1913,

chap. 37, secs. 15 and 16; R. S. B. C. 1911, chap. 170, secs. 164 to 174; R. S. Sask., chap. 146, sec. 6; Stat. Alta., 1911-12, chap. 3, sec. 241.

The negotiability of municipal debentures is sometimes restrained by a provision for registration in the books of the corporation.

They are usually issued for a term of years under the corporate seal, with interest coupons payable annually or semi-annually attached. It has been thought that their being under seal would prevent their being considered as negotiable instruments; but section 90 of the Bills of Exchange Act shows that this is not an objection in Canada. The coupons are generally in the form of ordinary promissory notes signed by one or more of the officers who execute the debentures.

In Ontario such debentures have long been held to be negotiable, and *bona fide* holders for value have been protected: *Anglin v. Kingston*, 16 U. C. Q. B. 121 (1857); *Trust & Loan Co. v. Hamilton*, 7 U. P. C. P. 98 (1857); *Crawford v. Cobourg*, 21 U. C. Q. B. 113 (1861); *Seeally v. McCallum*, 9 Grant 434 (1862).

In Quebec they have been held to be negotiable like promissory notes, and in suing might be declared upon as such: *Eastern Townships Bank v. Compton*, 7 R. L. 446 (1871); *Roxton v. E. T. Bank*, Ramsay, A. C. 240 (1882); *Macfarlane v. St. Cesaire*, M. L. R. 2 Q. B. 160 (1886); *St. Cesaire v. Macfarlane*, 14 S. C. Can. 738 (1887); *Ottawa v. M. O. & W. Ry. Co.*, 14 S. C. Can. 193 (1886); *Pontiac v. Ross*, 17 S. C. Can. 406 (1890).

See also *Robinson v. School Trustees of St. John*, 34 N. B. R. 503 (1898).

In the United States, such municipal bonds, negotiable in form, notwithstanding they are under seal, are clothed with all the attributes of commercial paper, pass by delivery or indorsement, and are not subject to equities (when the power to issue them exists), in the hands

of holders for value before maturity without notice: 1 Dillon, *Municipal Corporations*, 5th ed., secs. 871, 879: See *Cromwell v. Sac Co.*, 96 U. S. 51 (1877).

Decisions conflict as to whether coupons are entitled to grace. The weight of authority is in favour of their being payable on the very day of maturity without grace: 2 Daniel, secs. 1490*a*, 1505.

Coupons dishonored bear interest from their maturity: Ont. Judicature Act, 1913, chap. 19, sec. 35; C. C. 1069, 1077.

Company stock or shares.—Banks are also authorized to “deal in, discount, and lend money and make advances upon the security of, and take as valuable security for any loan made by it, the stock, bonds, debentures, and obligations of corporations, whether secured by mortgage or otherwise;” their powers as to dealing in these securities being the same as with regard to bills of exchange and promissory notes.

The word “stock” in this section would include not only such corporation bonds and debentures as are sometimes called stock, and debenture stock when authorized by statute, but also the shares or capital stock of joint stock and other companies. These latter are not negotiable in the ordinary sense, but are usually assigned or transferred in the books of the company in accordance with the provisions of the governing statute or by-laws.

The power of a bank to “deal in” the stock of such corporations would probably not be held to justify their dealing in them as brokers, investors or speculators. By acquiring a controlling interest, for example, in trading or loan companies they might come within the spirit of the prohibition as to engaging in trade, or lending upon mortgage. Their dealing in them should be in the way of a banking business. In *Re Barned's Banking Company*, L. R. 3 Ch. 105 (1867), similar words were, however, held to authorize a company to take shares in

another company. In the *Royal Bank of India's Case*, L. R. 4 Ch. 252 (1869), Selwyn, L.J., said: "I entirely agree with the judgment of Lord Cairns in the case of *Barned's Banking Company*, that there is not, either by the common or statute law, anything to prevent one trading corporation from taking or accepting shares in another trading corporation. . . . I apprehend that making advances upon shares in public companies is within the ordinary course of the dealing of bankers. . . . Then it is said that the consequence is one of very great hardship, as involving the shareholders in the *Royal Bank of India* in a great number of liabilities in respect of other companies with which they had nothing to do, and many cases have been suggested in argument, such as that of bankers becoming partners in a brewing company, or a shipping company, or many other things with which, in their own articles of association, they had no connection whatever. But I think the answer to that is, that such dangers are necessarily involved in lending money upon securities of this kind."

The only prohibition in the Act is as to its own stock or the stock of another bank: sub-sec. 2 (b).

Even where certificates are issued to represent such shares or stock they are not recognized in England as being negotiable. See *Swan v. N. B. Australasian Co.*, 2 H. & C. 175 (1863); *France v. Clark*, 26 Ch. D. 257 (1884); *London & County Bank v. River Plate Bank*, 20 Q. B. D. 232 (1887); *Sheffield v. London Joint Stock Bank*, 13 A. C. 333 (1888); *Colonial Bank v. Cady*, 15 A. C. 267 (1890).

In the United States they are not considered to be negotiable; but are said to be quasi-negotiable or assignable, being generally subject to certain restrictions in the charter or by-laws of the company. See 2 Daniel, secs. 1708, 1709.

Where a bank held shares of a joint stock company as collateral security, it was held not to be liable for calls.

on such shares: *Railway Advertising Co. v. Molsons Bank*, 2 L. N. 207 (1879); *Exchange Bank v. C. & D. Savings Bank*, M. L. R. 6 Q. B. 196 (1887). But in *Re Central Bank, Home Savings & Loan Co.'s Case*, 18 Ont. A. R. 489 (1891), where the loan company was authorized to lend money on bank shares, and accepted transfers, absolute in form, it was held liable for calls.

Under the Act of 1871, as amended in 1879, a bank could not make loans on the stock of a joint stock company, and no action would lie on behalf of a bank claiming to have made a loss on such a loan induced by false reports of directors of the company: *Bank of Montreal v. Geddes*, 3 L. N. 146 (1880).

When a bank has advanced money on the stock of a company it is not obliged to sell the stock before bringing an action against the directors of the company for having made false reports and for paying dividends not justified by the profits, and thereby unduly inflating the price of the stock and inducing the bank to lend upon it: *Montreal C. & D. Savings Bank v. Geddes*, 19 R. L. 684 (1890).

Bonds or debentures of other corporations.—Banks may also deal in these securities in the same manner as with bills and notes. Railway and other commercial corporations incorporated by special Dominion or Provincial Acts are usually authorized to issue bonds or debentures up to a certain limit, which are secured by a lien or mortgage on the undertaking made in favour of trustees for the holders of the bonds. Companies incorporated by Dominion letters patent may also issue bonds or debentures for borrowed money: R. S. C. chap. 79, sec. 69. In Ontario, by R. S. O. 1914, chap. 109, sec. 50, bonds and debentures of corporations, if payable to bearer, are transferable by delivery, and if to order, by indorsement and delivery, and the holder may sue in his own name. Other provinces have similar provisions.

See *Bank of Toronto v. Cobourg P. & M. Ry. Co.*, 7 O. R. 1 (1884), where bonds are compared to promissory notes, and *McKenzie v. The Montreal, &c., Ry. Co.*, 26 U. C. C. P. 333 (1878), and *Desrosiers v. Montreal P. & B. Ry. Co.*, 6 L. N. 388 (1883), as to coupons.

In England such bonds and debentures of both home and foreign companies have frequently come before the Courts. Even when they were made payable to order or bearer, the transferee has sometimes been denied the right to sue in his own name, although as a general rule the company which has issued such securities has been held to be estopped from denying their negotiability. The course of the jurisprudence has been towards placing such instruments more nearly on the same footing as bills and notes. The case of *Sheffield v. London Joint Stock Bank*, 13 A. C. 333 (1888), in the House of Lords, was understood to have somewhat restricted their negotiability. This interpretation was put upon it in *Simmons v. London Joint Stock Bank*, [1891] 1 Ch. 270; but the House of Lords, in reversing this latter decision, explained that the Sheffield judgment was based upon the particular facts of that case. For a full discussion of the law as to such bonds or debentures in England: see *Re Blakely Ordinance Co.*, L. R. 3 Ch. 154 (1867); *Re Natal Investment Co.*, *ibid.* 355 (1868); *Re General Estates Co.*, *ibid.* 758 (1868); *Re Imperial Land Co.*, L. R. 11 Eq. 478 (1871); *Webb v. Commissioners of Herne Bay*, L. R. 5 Q. B. 642 (1870); *Crouch v. Credit Foncier*, L. R. 8 Q. B. 374 (1873); *Goodwin v. Roberts*, 1 A. C. 476 (1876); *Re Romford Canal Co.*, 24 Ch. D. 85 (1883); *London Joint Stock Bank v. Simmons*, [1892] A. C. 201.

Certain debentures issued by an English company and payable to bearer had conditions indorsed on them which prevented their being promissory notes. Plaintiffs who owned them kept them in a safe, the key of which was entrusted to their secretary. The latter fraudulently pledged them to defendants, who made the advances in good faith. It was proved that commercial

usage had for many years treated such debentures as negotiable instruments transferable by delivery. It was held that although plaintiffs were not estopped by their conduct from denying defendants' title, yet the latter were entitled to hold them as transferable by mere delivery, and that *Crouch v. Credit Foncier* had been in effect overruled by *Goodwin v. Roberts; Bechuanaland Exploration Co. v. London Trading Bank*, [1898] 2 Q. B. 658. This case was followed in *Edelstein v. Schuler*, [1902] 2 K. B. 144, where a broker was sued for stolen bonds which he had sold in good faith. The bonds were issued by foreign railway and mining companies and by an English railway company and were payable to bearer. It was held that the negotiability of such bonds on the stock exchange had been so often proved that it should be taken as part of the law, and the action was dismissed.

Where an agent in possession of debentures of a corporation, payable to bearer, which are past due, but on which interest is being paid, pledges them for an advance for himself, the fact that they are past due does not destroy their negotiable character, and is not alone sufficient to put the person advancing the money on his guard. Nothing short of bad faith will affect his title. The fact that they are past due does not affect persons claiming ownership, who are not liable as makers or indorsers. A negotiation of such debentures is not subject to Articles 1487, 1488, 1489 and 1490 of the Civil Code as to sales by persons who are not the owners of the things sold: *Macnider v. Young*, Q. R. 3 Q. B. 539 (1894). This judgment was affirmed in the Supreme Court where it was also held (following *In re European Bank*, L. R. 5 Ch. 338), that a person taking such instruments after maturity, took them subject not only to the equities of prior parties to them, but also to the equities of third parties: *Young v. Macnider*, 25 S. C. Can. 272 (1895).

In the United States such bonds, as well as those issued by the Federal and State Governments, and by

municipalities, if made payable to order or bearer, are generally considered to be negotiable in the highest sense of that term, as are also the interest coupons: 2 Daniel, secs. 1486 to 1517a.

On account of having the latter attached they are frequently called "Coupon Bonds." If the bond is secured by a mortgage, this covers the coupon and interest on it if not paid on presentation at maturity. Neither the mortgage security nor the informal nature of the coupons prevents their being negotiable instruments: 2 Daniel, secs. 1486 to 1517a, *Venables v. Baring*, [1892] 3 Ch. 527.

Government Securities.—Banks are also authorized to deal in "Dominion, Provincial, British, foreign and other public securities." These bonds or debentures are usually in the form of negotiable instruments, payable to order or bearer. In the English Courts the question of the negotiability of foreign Government bonds has often come up. The question to be decided has been held to be, whether they were treated as negotiable in the English money market, if consistent with what appeared on their face, and not simply whether they were made payable to order or bearer, or whether they were considered to be negotiable in foreign countries. See *Glyn v. Baker*, 13 East 509 (1811), as to East India bonds; *Gorgier v. Mieville*, 3 B. & C. 45 (1824), as to Prussian Government bonds; *Lang v. Smyth*, 7 Bingham 284 (1831), as to Neapolitan bonds; *Atty.-Gen. v. Bouwens*, 4 M. & W. at p. 190 (1838), as to Russian and Danish bonds; *Heseltine v. Siggers*, 1 Exch. 856 (1848), as to Spanish stock; *Picker v. London & County Bank*, 18 Q. B. D. at p. 518 (1887), as to Prussian Government bonds. The course of the jurisprudence is in the direction of favoring the negotiability of such instruments.

Letters of credit.—A letter of credit is not a negotiable instrument: *Orr v. Union Bank*, 1 Macq. II. L. at p. 523 (1854); *British Linen Co. v. Caledonian Ins. Co.*, 4 Macq. 107 (1861). A circular note is a letter of credit in which the person in whose favor it is granted carries with him a

letter containing the signature to be shewn to the correspondents of the bank to whom the note may be presented. This is called a letter of indication. *Confians Stone Quarry Co. v. Parker*, L. R. 3 C. P. 1 (1867). A bank cannot deal in such securities as a "letter of credit" signed by the Provincial Secretary of Quebec without the authority of an order in council, which is dependent upon the vote of the legislature, and therefore not a negotiable instrument within the Bills of Exchange Act or the Bank Act: *Jacques Cartier Bank v. The Queen*, 25 S. C. Can. 84 (1895).

A bank cannot revoke a letter of credit at pleasure; but after notice of revocation has been given to the holder, he is not bound to present it for acceptance in order to recover from the bank: *Bank of Toronto v. Ansell*, 5 L. N. 408 (1873).

Post-office orders.—A post-office money order is not a negotiable instrument: *Fine Art Society v. Union Bank*, 17 Q. B. D. at p. 713 (1886).

A general banking business.—In addition to the right to issue notes for circulation and to receive deposits given in other sections, and in addition to the special powers as a bank of discount enumerated in the earlier part of this section, a bank is authorized to "engage in and carry on such business generally as appertains to the business of banking." This, of course, is subject to the limitations and restrictions contained in the Act.

A bank may also pledge or sell any of the commercial paper or other personal property which it may have acquired by purchase or otherwise become the owner of: *Ryan v. Bank of Montreal*, 16 O. L. R. 75 (1907).

A bank, like any other corporation, has the right to do such acts and to enter into such contracts as may be necessary to enable it to carry out the object of its incorporation, or to exercise the powers that are either expressly or by implication conferred upon it by the Act.

Section 79 gives it the power to acquire real estate for its own use, and to dispose of the same. Sections 77, 81, 82, and 89 show how it may dispose of stock, lands and merchandise in which it may not traffic, but which come into its possession indirectly through its dealings authorized by the Act.

A branch of general banking business not specified in the Act is the collection of bills and other negotiable instruments for its customers. The bank presents them for payment, and if paid, places the amount, less its charge for collection, to the credit of the customer. Such instruments, while in the custody of the bank, remain the property of the customer, subject to any lien the bank may have, if it allows the customer to draw against them, or if it places the amount to his credit before it is paid. The bank may sue the other parties to the bill if it is not paid; but cannot sue the customer unless it has a lien on the bill for an advance overdraft or other liability: *Ex parte Schofield*, 12 Ch. D. 337 (1879); *Misa v. Currie*, 1 App. Cas. 554 (1876). The bank is liable for any loss that may arise from not duly presenting the bill for payment, or for not giving due notice of dishonor: *Steinhoff v. Merchants Bank*, 46 U. C. Q. B. 25 (1881). The bank may make a reasonable charge for such services.

A similar rule would apply where a customer delivers a bill to a bank to get accepted for him. In case acceptance is refused and the bank fails to inform the customer, it will be liable for any damage arising from such neglect: *Van Wart v. Wooley*, 3 B. & C. 439 (1824); *Bank of Van Diemen's Land v. Bank of Victoria*, L. R. 3 P. C. 526 (1871).

A collecting bank which accepted a condition and permitted the bill to be cancelled, is liable to its principal who refused to accept the condition: *Bank of Scotland v. Dominion Bank*, [1891] A. C. 492.

When a bank receives a note for collection and in the regular course of business places the same in the hands

of a responsible and solvent agent, it is not liable for the loss of the note in the mails. In any case the offer of the bank to give security to the makers and endorser that they would never be troubled if they paid the note was sufficient: *Litman v. Montreal City & District Savings Bank*, Q. R. 13 S. C. 262 (1897).

Directors of a bank, without special authorization, have power to borrow such sums as may be required to meet the liabilities of the bank, and to give a promissory note or other usual acknowledgment therefor. The fact that the engagement to repay was accomplished by other stipulations that were *ultra vires* would not discharge the bank from liability to repay the loan or render the note invalid: *Bank of Australasia v. Breillat*, 6 Moore P. C. 152 (1847).

Authority to carry on such business as generally appertains to the business of banking covers the case of a bank guaranteeing payment to the vendors in England of the price of goods sold to a customer in Montreal, on having the bills of lading addressed directly to the bank, and does not come within the prohibition as to dealing in merchandise: *Molsons Bank v. Kennedy*, 10 R. L. 110 (1879). See also to the same effect *Simpson v. Dolan*, 16 O. L. R. 459 (1908).

Where a bank discounted a draft on the assurance that the acceptor of a maturing bill would accept it, and a cheque for the proceeds was sent to the acceptor with a statement of what had occurred, and the latter kept the cheque and retired the maturing bill with it, but refused to accept the new one, he was held liable to the bank for the amount: *Torrance v. Bank of British North America*, L. R. 5 P. C. 246 (1873).

In a case very similar to the foregoing, *Dunspaugh v. Molsons Bank*, 23 L. C. J. 57 (1878), where the bank made advances after being shown a telegram from the acceptor that he would accept a renewal, it was held entitled to recover the amount of its advances from the acceptor,

who declined to accept the renewal. Again, where the drawer telegraphed the acceptor to draw on him for the amount of a maturing bill, and a bank, on seeing the telegram, advanced the money to retire the maturing bill, its claim against the drawer, who refused to accept the new bill, was maintained: *Bank of Montreal v. Thomas*, 16 O. R. 503 (1888).

A manufacturer discounted with a bank an unaccepted draft on a customer, and at the same time assigned to the bank the claim for the price of the goods. The customer refused to accept the draft, but remitted the money to the seller who had become insolvent and it came into the hands of his curator. The latter claimed that the bank had no power to accept such an assignment. It was held that the transaction was authorized by the present section and also by section 74 (now 88) of the Bank Act: *Merchants Bank v. Darveau*, Q. R. 15 S. C. 325 (1898).

Bankers are subject to the same principles of law as ordinary agents, and when they receive a bill for collection cannot bind the principals by setting off the amount of the bill against a balance due by them to the acceptor, or otherwise than by receiving payment in money only: *Donogh v. Gillespie*, 21 Ont. A. R. 292 (1894).

A firm of contractors, in pursuance of an agreement with an indorser of a note discounted, assigned to a bank moneys which would be coming to them on a railway contract, and gave the manager power of attorney to collect the money. It was held that the bank might, under its general powers, take an assignment of such a chose in action as additional security: *Molsons Bank v. Carscaden*, 8 Man. R. 451 (1892).

A bank advanced money to get out logs which were sawn at plaintiff's mill. The lumbermen insured the sawn lumber and assigned the policies to the bank; the lumber was burnt. The bank was held entitled to the money in preference to the mill-owner who claimed a lien for sawing: *Chew v. Traders Bank*, 19 O. L. R. 74 (1909).

An assignment of a debt may be taken by a bank under its general banking powers: *Rennie v. Quebec Bank*, 3 O. L. R. 541 (1902). See to same effect *Moffatt v. Merchants Bank*, 11 S. C. Can. 46 (1885); *Fraser v. Imperial Bank*, 47 S. C. R. 313 (1912); *Norton v. Canadian Bank of Commerce*, 1 Sask. 448 (1908).

A bank is not authorized to enter into a contract of suretyship guaranteeing the payment by a customer of the hire of a steamship under a charter party, and where the bank has derived no benefit from such a contract a claim against it under such circumstances will be dismissed: *Johansen v. Chaplin*, M. L. R. 6 Q. B. 111 (1889); *Watts v. Wells*, M. L. R. 7 Q. B. 387 (1890).

A Milwaukee bank sent to a Toronto bank a bill drawn at forty-five days, together with a bill of lading for wheat. It was held that in the absence of instructions the latter bank was right in giving up the bill of lading on the bill being accepted. Evidence of usage in the United States and Canada was given. It was held that the latter alone was relevant: *Wisconsin Bank v. Bank of British North America*, 21 U. C. Q. B. 284 (1861). To the same effect, *Goodenough v. City Bank*, 10 U. C. C. P. 51 (1860).

Where a customer deposits a cheque for collection and it is passed to his credit, the bank has a right to charge it back when it is dishonored, even when the customer did not endorse it: *Owens v. Quebec Bank*, 30 U. C. Q. B. 382 (1870).

Where the directors of a bank are authorized to deal with money, to advance money, to take money from their customers, to indorse bills, and to do a general banking business, they have power, when the formation of a company is of importance to the bank, to guarantee the payment of interest on the debentures of the company: *In re West of England Bank*, 14 Ch. D. 317 (1880).

When a bank receives for collection, without special instructions, a cheque on a bank in the same place, it

should present it either the same day or the next business day; if on a bank in another place, it should be forwarded within the same delay: *Redpath v. Kolfage*, 16 U. C. Q. B. 433 (1858); *Owens v. Quebec Bank*, 30 *ibid.* 382 (1870); *Boyd v. Nasmith*, 17 O. R. 40 (1888); *Blackley v. McCabe*, 16 Ont. A. R. 295 (1889); *Sawyer v. Thomas*, 18 *ibid.* 129 (1890); *Marler v. Stewart*, 2 Stephens, Que. Dig. 111 (1878); *Heywood v. Pickering*, L. R. 9 Q. B. 428 (1874).

The same diligence should be used in presenting for payment a bill payable on demand, and for presenting for acceptance a bill entrusted to the bank for that purpose. If a bill is not accepted within two days after it is presented for acceptance, it should be treated as dishonored: Bills of Exchange Act, sec. 80.

A bank gave an open letter of credit for £15,000, and requested parties negotiating bills under it to indorse particulars on the back of it. Bills were drawn under it, and when negotiated were indorsed as requested. The bank failed, and the party to whom the letter was given was indebted to the bank apart from these bills. The bank was held liable to the holder of the bills, irrespective of the state of the account between it and the party to whom the letter was given: *Agra & Masterman's Bank, Ex parte Asiatic Banking Corporation*, L. R. 2 Ch. 391 (1867).

A bank opened two accounts with a customer, a loan account and a drawing account. It closed the latter by transferring the balance to the loan account in reduction of the customer's debt. At the time there were bills and cheques of the customer outstanding, which on being presented were dishonored. It was held that in view of the course of dealing, the bank was not entitled to close the current account without a reasonable notice, and the customer recovered £500 damages: *Buckingham v. The London and Midland Bank*, 12 T. L. R. 70 (1895).

Where a customer of a savings bank which was not a bank of discount deposited a marked cheque which was

passed to her credit and entered in her pass-book, the bank was presumed in the absence of evidence to have received the cheque for collection as agent of the customer, and not with the intention of acquiring title to it, or guaranteeing its payment: *Gaden v. Newfoundland Savings Bank*, [1899] A. C. 281.

A firm of stockbrokers had two accounts with their bankers, a current account and a loan account. They had deposited as security for their general indebtedness bonds and shares belonging to clients, but the bankers did not know these were not their own. The brokers failed, having a balance to their credit on the current account, and owing the bank on the loan account. The bankers sold the securities for more than the total amount due on the loan account. It was held that the two accounts should be treated as one; that the bankers should apply the balance to the credit of the current account on reduction of the amount due on the other, and use the proceeds of the securities only to pay the balance, the surplus belonging to the owners of the securities. Two days before the stoppage of the brokers a client had sent them a cheque to pay for some stock they had purchased for him. They paid this in to their current account, and the purchase was not completed. Held, that the client had no equity on the balance of the current account as against the owners of the securities: *Mutton v. Peat*, [1900] 2 Ch. 79.

Banks as bailees.—Sometimes banks keep for safety boxes of valuables, such as plate, jewellery, etc., for their customers. If they make a charge for this, they would incur the same responsibility as other depositaries or bailees. If on the other hand, as is usually the case, they do it without making a charge, they will be liable only in the case of gross negligence. Where a box containing securities was kept in the inner vault of a bank and was stolen by the cashier, the Privy Council held that the owner could not recover as no charge was made for the service: *Giblin v. McMullen*, L. R. 2 P. C. 317 (1868). In

the case of such deposits the Statute of Limitations or prescription does not begin to run until after a demand has been made on the bank for delivery of the property: *In re Tidd, Tidd v. Overell*, [1893] 3 Ch. 154. This business is now done largely by trust companies and safe deposit companies, which rent boxes in their vaults for the custody of securities and other valuables.

2. Business prohibited.—Except as authorized by this Act, the bank shall not, either directly or indirectly,—

- (a) deal in the buying or selling, or bartering of goods, wares and merchandise, or engage or be engaged in any trade or business whatsoever;
- (b) purchase, or deal in, or lend money or make advances upon the security or pledge of any share of its own capital stock, or of the capital stock of any bank; or,
- (c) lend money or make advances upon the security, mortgage or hypothecation of any lands, tenements or immovable property, or of any ships or other vessels, or upon the security of any goods, wares and merchandise. 53 V., c. 31, s. 64.

Business prohibited to banks.—A bank being created for the purpose of carrying on a banking business, anything outside of that would be beyond its scope. There are, however, certain transactions or lines of business, more or less connected with banking, which it might be claimed that a bank had a right to engage in if not specially prohibited.

Subject to the exceptions named in the Act, these are laid down in the present section as follows:

1. A bank is prohibited from dealing in the buying or selling or bartering of goods, wares and merchandise, or engaging in any trade or business whatsoever. The exceptions are contained in sections 80, 84, 85, 86 and 88, which relate to property which a bank may acquire through a valid chattel mortgage, warehouse receipt, bill of lading or security. Such goods, wares and merchandise may be disposed as pointed out in section 89.

In *Radford v. Merchants' Bank*, 3 O. R. 529 (1883), a bank sold goods which it had acquired by means not recognized by the Act, and was sued for breach of warranty. It was held that the action would not lie, as the bank was prohibited from selling goods.

In *Ayers v. South Australia Banking Co.*, L. R. 3 P. C. 548 (1871), a similar prohibition was considered, and it was said that it would not prevent the property from passing or the purchaser from the bank getting a good title to the goods.

2. A bank is also prohibited from purchasing, or dealing in, or lending money, or making advances upon the security of any pledge of any share of its own capital stock, or the capital stock of any bank.

This prohibition is absolute. If directors should undertake to buy up shares with the bank's money in order to keep up the price of the stock or for any other purpose, they would be personally liable: *McDonald v. Rankin*, M. L. R. 7 S. C. 44 (1890).

In the winding up of the Central Bank, a question was raised as to shares which the cashier had purchased for the bank and which he had subsequently disposed of. It was held that the purchasers could not set up this illegality so as to escape payment of the double liability to the liquidators: *Nasmith's Case*, 16 O. R. 293 (1888). See *Stone v. City and County Bank*, 3 C. P. D. 282 (1877). A person who had shares transferred to him on behalf of the bank is also responsible for the double liability on the winding up: *Henderson's Case*, 17 O. R. 110 (1889).

The general manager of the Sovereign Bank, who was also a director and vice-president, expended a large sum of the money of the bank in buying shares of the bank in order "to support the market." He finally persuaded the other directors to take over these shares for themselves and some of their friends, and to give their promissory notes therefor. In an action by the liquidator on these notes, it was held by the Court of Appeal that the illegality of the transaction did not relieve the directors, and they could not set it up as a defence to the action; and that the recouping to the bank of the money which had been unlawfully used in the purchase of the shares was a good consideration as between the bank and the makers of the notes: *Stavert v. McMillan*, 24 O. L. R. 456 (1911). This judgment was affirmed by the Privy Council on the 23rd of July, 1913; 24 O. W. R. 936.

It is unnecessary, however, for a bank to take security upon its own stock held by a debtor, as section 77 gives it a privileged lien on such stock and its dividends until the debt is paid. Sections 43 and 46 also give it the power to prevent the transfer of any such stock until all liabilities to it are discharged. This applies not only to debts due but also those to mature. In the case of *The Exchange Bank v. Fletcher*, 19 S. C. Can. 278 (1890), it was assumed that under the Act of 1871 as amended in 1879, a bank had no authority to lend upon the security of the shares of another bank. Such shares were transferred to the managing director of the Exchange Bank as security for advances made by the latter. He fraudulently pledged them to another bank for his private debt and absconded. It was held that the prohibition to make advances on such security applied to the bank lending, and not to the borrower, and the loan having been repaid, the Exchange Bank was condemned to return the shares or to pay their value.

3. A bank is also prohibited from lending money or making advances upon the security, mortgage, or hypothecation of any land, tenements or immovable property.

It may, however, take a mortgage on land or on personal property by way of additional security for debts contracted to it in the course of its business: sec. 80. See the notes under that section as to how this provision has been interpreted.

Under the Act of 1871, it was held that the cashier of a bank who had indorsed notes for a customer of the bank might, if in good faith, take a mortgage on the customer's real estate to protect himself on the indorsements: *Thibaudeau v. Beaudoin*, 3 L. N. 306 (1880).

4. A bank is also prohibited from lending money or making advances upon the security, mortgage or hypothecation of any ship or vessel, except that it may take a mortgage on them by way of additional security: sec. 80; and it may advance money for aiding in the building of ships or vessels: sec. 85. See the notes to these sections.

5. A bank is also prohibited from lending money or making advances on the security of any goods, wares and merchandise, except as it may lend upon chattel mortgage by way of additional security for debts contracted: sec. 80; or on a bill of lading or warehouse receipt under section 86; or on a security under section 88. See the notes to these sections and to section 90.

As to what would be the result of a bank's doing or attempting to do any of the acts prohibited in this section it would be difficult to lay down any general rule, as each case would be governed largely by its particular circumstances. In the first place the bank would be liable to the penalty of \$500 for each violation, which would be payable to the Dominion Government: secs. 141 and 146.

In the next place it is to be observed that these acts, in so far as they do not come within the exceptions in other sections, are not only *ultra vires* in the sense that they are outside the objects for which banks are

incorporated, but they are also illegal, as being positively prohibited by the Act.

It has been laid down as the result of the English authorities on the subject, that while any such transaction is merely executory, neither party can have as against the other any cause of action; and that even when executed wholly or in part by one of the parties, it is not, nor is any part of it, enforceable by an action directly upon the engagement itself; the most that the party complaining can obtain is an account. If a loan is made and a prohibited security is taken, the bank would have no right to claim or enforce the security, but the borrower would be liable for the loan. Where a security is partly legal and partly illegal, the right of a bank has been maintained for the portion that was legal.

In *Bank of Toronto v. Perkins*, 8 S. C. Can. at page 610 (1883), Ritchie, C.J., said: "This prohibition (as to lending on mortgage) is a law of public policy in the public interest, and any transaction in violation thereof is necessarily null and void. No Court can be called upon to give effect to any such transaction or to enforce any contract or security on which money is lent or advances as thus prohibited are made. It would be a curious state of the law, if, after the legislature had prohibited a transaction, parties could enter into it, and, in defiance of the law, compel Courts to enforce and give effect to their illegal transactions." In the same case, at p. 617, Strong, J., said: "Whenever the doing of any act is expressly forbidden by statute, whether on grounds of public policy or otherwise, the English Courts hold the act, if done, to be void, though no express words of avoidance are contained in the enactment itself." Followed in *Randolph v. Randolph, People's Bank Claim*, 4 Eastern L. R. 24, 3 N. B. Equity R. 591 (1907); and in *Thien v. Bank of B. N. A.*, 4 Alta. L. R. 228 (1912).

In the *National Bank of Australasia v. Cherry*, L. R. 3 P. C. 299 (1870), Lord Cairns laid down the rule that

the prohibition to lend on the security of real estate was a matter of public policy, and that when such a transaction was entered into, the contract for the loan of the money would be perfectly valid, and the only question would be whether the bank had power to take the security. If this was *ultra vires* the bank could not hold it. It was also pointed out that the object of the legislation was not so much to make contracts for advances void, but rather to make it *ultra vires* for the bank to take, on the occasion of contracts for these advances, securities of the kind mentioned.

Money was borrowed from a savings bank on the security of letters of credit of the Quebec Government. The debtor assigned and the bank filed its claim with the curator. Certain creditors contested it on the ground that the transaction was *ultra vires* and illegal. It was held that though the lending of money on the pledge of such securities was *ultra vires*, and though this might affect the pledge as regards third parties interested in the securities, it was not, of itself, and *ipso facto*, a radical nullity of public order of such a character as to disentitle the bank from claiming back the money with interest: *Rolland v. La Caisse d'Economie*, 24 S. C. Can. 405 (1895).

It is a question whether the only results of a bank's engaging in prohibited business are the incurring of the penalties laid down in section 146, and the avoidance of the contract entered into and the security taken in certain cases, or whether it also renders itself liable to the forfeiture of its charter at the suit of the Crown. In 1872 the Minister of Justice granted a fiat for a *scire facias* to set aside the charter of La Banque Nationale on this ground, but the matter was not followed up. In 1881 another application was made to the then Minister of Justice for a fiat to prosecute the Bank of St. Hyacinthe in the Exchequer Court to have its charter declared forfeited for engaging in business prohibited by the Act.

The Minister in refusing the application said that no authority had been given for the annulling of a charter created by Act of Parliament, and he was not satisfied that the officers of the bank had intentionally and materially violated the terms of their charter: *Sarazin v. Bank of St. Hyacinthe*, 28 L. C. J. 270 (1881).

A firm of millers, being heavily indebted to a bank, and unable to pay, made over their assets to the bank, including an assignment of their lease of the mill, and agreed to operate it for the benefit of the bank until a purchaser could be found for it as a going concern, the bank undertaking to indemnify them against the liabilities of the business. Being proceeded against for rent the respondents sought to hold the bank liable to them on its guarantee. The defence was that the agreement was *ultra vires* and illegal. The trial Judge decided against the bank; this was reversed by a divisional Court, but restored by the Court of Appeal, in both cases unanimously: *Peterboro Hydraulic Co. v. McAllister*, 17 O. L. R. 145 (1908). On appeal to the Supreme Court this last judgment was affirmed by a majority of three to two, it being held that the prohibitory provisions of this section do not prevent a bank from agreeing to take in payment of a debt from a customer an assignment of a lease of the latter's premises and to carry on the business for a time with a view to disposing of it as a going concern at the earliest moment. Some of the Judges in favor of holding the bank liable did so on the ground that it was not *ultra vires* for the bank to take over the lease and that this was severable from the carrying on of the business: *Ontario Bank v. McAllister*, 43 S. C. Can. 338 (1910).

BANKER'S LIEN.

By the law merchant, which is part of the common law, and consequently to be judicially noticed without being proved, a bank has a general lien on the securities of its customers in its hands. The rule was stated as follows by Lord Campbell in *Brandao v. Barnett*, 12 Cl. &

F. 787 (1846): " Bankers must undoubtedly have a general lien on all securities deposited with them as bankers, by a customer, unless there be an express contract, or circumstances that show an implied contract inconsistent with lien." The language was approved and adopted by the Privy Council in the case of the *London Chartered Bank v. White*, 4 A. C. at p. 422 (1879).

This lien does not apply to plate, securities, etc., merely deposited in the bank for safe keeping: *Ex parte Eyre*, 12 L. J. Ch. 266 (1843); *Leese v. Martin*, L. R. 17 Eq. 224 (1873).

In the Province of Quebec, where the civil law and not the common law prevails, the general rule is found in Article 1975 of the Civil Code, which says: " If another debt be contracted after the pledging of the thing and become due before that for which the pledge was given, the creditor is not obliged to restore the thing until both debts are paid." In the case of banking this would be subject to Article 1978, which says: " The rules contained in this chapter are subject in commercial matters to the laws and usages of commerce." There is an absence of judicial authority as to how far the law merchant would be recognized. In the case of *The Exchange Bank v. The City and District Savings Bank*, 14 R. L. 8 (1885), it was held that securities pledged for a special debt could not be held for an anterior debt. It does not appear that the general bankers' lien was claimed in the matter, and his finding as to the contract in question might bring it within the exception mentioned above by Lord Campbell.

It must be understood that the deposit and the debt are respectively made and due not only by the same person but in the same right. If, for example, it is claimed that the deposit is of trust funds, although this does not so appear, the bank is entitled to its lien or set-off unless it had notice of such trust: *Union Bank of Australia v. Murray-Aynsley*, [1898] A. C. 693.

In *Lloyds Bank v. Swiss Bankverein*, 29 T. L. R. 219 (1913), the plaintiffs had lent money to bill brokers on the security of certain bearer bonds. The loans were called in and the brokers gave a cheque for the amount due and received the bonds, which they transferred to defendants the same day. On the dishonor of the brokers' cheque the next morning plaintiffs sued defendants for the bonds, claiming a custom or usage that there was a trust in their favor until the cheque was paid. It was held that there was no such custom or implied trust and it would be inconsistent with the nature of negotiable securities.

This general lien is only for a debt due and payable to the bank, and is not so extensive as that which is given on its own shares by section 77, which is "for any debt or liability for any debt"; *Jeffryes v. Agra and Masterman's Bank*, L. R. 2 Eq. 674 (1866); *Bowen v. Foreign Gas Co.*, 22 W. R. 740 (1874); *McCready Co. v. Alberta Clothing Co.*, 3 Alta. L. R. 67 (1910).

ILLUSTRATIONS.

1. When advances are made by a bank contemporaneously with a deposit of title deeds, the presumption would be that the security was for the advances and not for an antecedent debt. In a conflict of testimony, however, the fact that the latter was legal and the former illegal was taken into account, and the transaction upheld: *Royal Canadian Bank v. Cummer*, 15 Grant, 627 (1869).

2. Commercial securities pledged to guarantee a special loan cannot be retained by the creditor until a debt anterior to that for which the securities were pledged should be paid, unless there was a special agreement to that effect: *Exchange Bank v. City and District Savings Bank*, 14 R. L. 8 (1885).

3. Where warehouse receipts were pledged to a bank for a certain debt, a parol agreement that the surplus

of the proceeds after the sale of the goods was to apply on other debts due to the bank, was upheld: *Thompson v. Molsons Bank*, 16 S. C. Can. 664 (1889); see also *Insky v. Hochelaga Bank*, Q. R. 10 S. C. 510 (1896).

4. If the bankers' lien exists in the Province of New Brunswick, the person against whom it is sought to enforce it, must be a customer of the bank: *Allen v. Bank of New Brunswick*, 17 N. B. (1 P. & B.) 446 (1877).

5. Where the members of a firm have separate private accounts with the bankers of the firm, and a balance is due to the bankers by the firm, the bank has no lien for such balance on the separate accounts: *Richards v. Bank of B. N. A.*, 8 B. C. R. 143, 209 (1901.)

6. A banker has a general lien upon all the securities in his hands belonging to any particular person for his general balance, unless there be evidence to show that he received any particular security under special circumstances, which would take it out of the common rule: *Davis v. Bowsher*, 5 T. R. at p. 491 (1794).

7. A bank has no lien for its general balance on securities casually left in the office by a customer after a refusal to make advances on them: *Lucas v. Dorrien*, 7 Taunton 278 (1817).

8. Security given by a customer for the amount "which shall or may be found due on the balance" of his account, covers only the then existing balance, and does not operate as a continuing security: *Re Medewe*, 26 Beavan 588 (1859).

9. The fact that securities were deposited as security for a specific advance is not inconsistent with the claim of a bank to hold them for the general balance: *Jones v. Peppercorne*, 28 L. J. Ch. 158 (1859).

10. A bank has no lien for the balance of an account upon boxes containing plate or securities, which were deposited with it for safe custody, the depositor retaining the keys: *Leese v. Martin*, L. R. 17 Eq. 224 (1873).

11. The bankers' lien applies to money paid in on current account unless paid in and received for a particular purpose: *Misa v. Currie*, 1 App. Cas. 534 (1876).

12. Where plaintiff delivered to his broker scrip certificates purporting to be transferable by delivery, which the broker in fraud of his principal deposited with a bank as security for his own debt, plaintiff was estopped from denying the negotiability or the lien of the bank: *Rumball v. Metropolitan Bank*, 2 Q. B. D. 194 (1877).

13. Where a customer has three separate accounts in a bank and there is no special agreement regarding them and the bank has had no notice that any of them is for other persons, they have a lien on each for the balance due on the others: *Teale v. Brown*, 11 T. L. R. 56 (1894).

14. The lien does not attach to securities of a customer known by the bankers to be affected by a trust: *Cuthbert v. Roberts*, [1909] 2 Ch. 226.

AGENTS, TRUSTEES, ETC.

Difficult questions sometimes arise when banks receive securities or acquire claims upon them from agents, trustees and others who may be acting for principals or other third parties.

It is in the nature of bills and notes and other instruments that are negotiable in the full sense of that term, that the person who acquires them in good faith before maturity for value without notice of any defect or irregularity, or in the language of the Bills of Exchange Act, becomes a holder in due course, may acquire a better title than that of the person from whom they are received. If a bank takes such securities in good faith for value from a person who negotiates them in breach of trust, or even from a thief, it may acquire a perfect title. It has long been well settled that not even gross negligence

is sufficient to invalidate such a title, that nothing short of fraud or bad faith will accomplish this.

It is to be observed that with respect to securities in which a bank deals it has no protecting clause regarding trusts, similar to sections 52 and 96 relating to shares of its own stock and to deposits held on trust. In dealing with trust securities it is on the same footing as any other dealer.

With respect to such securities as bonds, debentures, scrip stock, and the like, there has been of recent years a conflict of authority.

In *The Bank of Montreal v. Sweeny*, 12 A. C. 617 (1887), the Privy Council held, affirming the judgment of the Supreme Court of Canada, that where a customer of the bank transferred to the manager, as security for a private debt, certain shares in a joint stock company, which he held "in trust," this was sufficient to have put the bank upon enquiry, and it was responsible to the real owner. See *Muir v. Carter*, and *Holmes v. Carter*, 16 S. C. Can. 473 (1889); *Raphael v. McFarlane*, 18 S. C. Can. 183 (1890); and *Shaw v. Spencer*, 100 Mass. 382 (1868).

In *Petry v. La Caisse d'Economie*, 19 S. C. Can. 713 (1891), the plaintiffs were held not to be entitled to get back moneys which one of them had paid to redeem such stock with full knowledge of the facts.

The case of *Sheffield v. London Joint Stock Bank*, 13 A. C. 333 (1888), arose over certain Grand Trunk Railway and other railway and canal bonds transferred in blank and delivered to a broker or money lender, who made advances on them. He deposited them with the bank as security for his running account. The House of Lords held that the bank should have known from the nature of the broker's business that he was not the owner, and maintained the action of the real owner for the bonds or their value.

In *Simmons v. London Joint Stock Bank*, [1891] 1 Ch. 270, Kekewich, J., and the Court of Appeal, relying

upon the case of Sheffield against the same bank above cited, held that where a broker pledged certain foreign bonds of plaintiffs, with those of other persons, to raise a lump sum, the bank had no reason to believe that the broker had authority to pledge the securities in that way, and did not acquire a good title. This decision was reversed by the House of Lords, which held that the circumstances were not sufficient to have aroused the suspicion of the bank, which was entitled to retain and realize upon the securities, as having acquired them in good faith and for value. They further stated that the case of Sheffield against the bank turned entirely upon the special facts of that case: *London Joint Stock Bank v. Simmons*, [1892] A. C. 201.

In *London & Canadian L. & A. Co. v. Duggan*, [1893] A. C. 506, the Privy Council held, reversing a judgment of the Supreme Court of Canada, that where the manager of the Federal Bank held certain shares in a joint stock company simply as manager "in trust," these words implied that he held them in trust for the Federal Bank, and that there was nothing to put the London and Canadian Company upon further enquiry.

A will authorized an executor to borrow for the estate. The bank discounted notes signed by him personally and endorsed by him as executor and placed the proceeds to the credit of his personal account. This continued for six or seven years to the knowledge and with the acquiescence of the legatees. The notes when paid or renewed were surrendered and destroyed. It was found that the bank had acted throughout in good faith and held that it was not liable to the legatees for the final defalcations of the executor: *Gratton v. Banque d'Hoche-laga*, Q. R. 21 Q. B. 97 (1911).

Bank holidays.—The Bank Act has no provision for holidays. The expression is popularly used for those days which are holidays for the maturity of bills and notes under the Bills of Exchange Act, section 43. These

are: (a) In all the provinces, Sundays, New Year's Day, Good Friday, Easter Monday, Victoria Day (May 24th), Dominion Day (July 1st), Labour Day (1st Monday in Sept.), Christmas Day, the birthday (or the day fixed by proclamation for the celebration of the birthday) of the reigning sovereign; any day appointed by proclamation for a public holiday, or for a general fast, or a general thanksgiving throughout Canada; and the day next following New Year's Day, Victoria Day, Dominion Day, Christmas Day, and the birthday of the reigning sovereign, when such days respectively fall on Sunday:

(b) In the Province of Quebec in addition to the said days, the Epiphany (January 6th), the Ascension (movable), All Saints' Day (November 1st), Conception Day (December 8th);

(c) In any province any day appointed by proclamation of the Lieutenant-Governor for a public holiday, or for a fast or thanksgiving, and any non-juridical day by virtue of a statute of such province.

Throughout Canada banks observe as holidays the days named in the foregoing clauses (a) and (c); and in the province of Quebec in addition those named in clause (b). Outside of Canada they observe the holidays kept by banks in the respective countries. Were it not for the list given in section 43 of the Bills of Exchange Act, the word "holiday" in that Act would have meant all the days named in R. S. C. c. 1, s. 34 (11), which includes all the above named holidays for Quebec, and in addition Easter Monday.

Banking hours.—No hours are prescribed for banks by the Act. In most places they are fixed by usage at from 10 to 3 on all business days except Saturdays, when they are from 10 to 12 or 1. A bill or note cannot be protested for non-payment until after 3 o'clock, even on a Saturday: Bills of Exchange Act, sec. 121 (b). When the bill was under discussion in the House of Commons it was proposed to make the hour 1 o'clock on Saturday,

but the argument that Saturday was market day in many towns, and the chief business day, prevailed. The acceptor or maker of a bill or note could no doubt claim that he was not liable for the costs of protest before 3 o'clock, and if he could show that he was injured by notices of protest sent out before that time he might have a right of action.

Clearing house.—The first clearing house was established in London in 1775. It was at first simply a place of meeting where the clerks of the different banks exchanged cheques, bills, etc. The mode in which it was operated in 1836 is described in *Warwick v. Rogers*, 5 M. & G. at p. 348 (1843). The risks run in carrying large sums of money led to the appointment of several clerks who were common to all the banks using the clearing house, to whom each bank would report the payment of the balance settling the transaction. The saving in the use of money has been very great, as a rule not more than 3 or 4 per cent. of the aggregate transactions being paid in bank notes or specie.

A clearing house was organized in Montreal on the 20th of December, 1888, an example since followed by Toronto, Halifax, Hamilton, Winnipeg, St. John, Vancouver, Victoria, Ottawa, Quebec, London, Calgary, Edmonton, Brandon, Brantford, Fort William, Lethbridge, Moose Jaw, Regina, and Saskatoon, the last seven having been added since 1907.

Its objects and methods have been described as follows by Davidson, J., in the case of *La Banque Nationale v. Merchants Bank*, M. L. R. 7 S. C. (1891), at page 336: "Its purposes are to provide simple and expeditious facilities for the daily settlements of the banks with each other, by the effecting at one place and at one time of the daily exchanges between the associated banks, and the payment of the differences resulting from such exchanges. These objects are carried out in this way: Every morning at 10 o'clock each bank has at the clearing house all the cheques and other demands it has

received against all the other banks during the preceding day, making them up into separate bundles for each bank, with a statement on the cover showing the aggregate of the contents of each bundle. The settlement is made on these statements, without regard to the fact whether the contents of the bundle were correctly ticketed or found good claims against the bank charged. Thus each messenger is, in a few minutes, able to receive and take to his bank all the claims of the other banks against it. To attempt to examine and challenge securities at the clearing house would make its purposes inoperative. These temporary clearing house balances are subsequently verified at the bank by a scrutiny of the cheques and other demands of which they are composed."

In the above case a temporary regulation made when the clearing house was organized, that dishonoured cheques received in the morning should be returned before noon, was relied upon as a ground for refusing to receive one returned in the afternoon, the refusal being based on the statement that the securities had been given up early in the afternoon. An attempt was also made to prove a usage to the same effect as the rule. The Court held that a custom or usage of trade or banking must be strictly proved, that the rule in question only purported to be a temporary one, that the usage alleged was not general, and the rule had fallen into disuse, and that the ordinary rule of law as to the return of cheques for which there are no funds had not been superseded. Previous to the establishment of the clearing house the undisputed practice was to return such cheques at 3 o'clock.

The practice of the Toronto Clearing House was considered in the case of *The Bank of Hamilton v. The Imperial Bank*, where a depositor of the plaintiff bank drew a cheque for \$5 which the bank marked good, and which he raised to \$500 and deposited in the Imperial Bank and drew against it. It was sent through the clearing house and paid by the Bank of Hamilton, which

discovered the fraud the next day and sued the Imperial Bank. All the Courts decided in favor of the Bank of Hamilton. In the judgment of the Privy Council (*Imperial Bank v. Bank of Hamilton*, [1903] A. C. at p. 55) the practice is referred to in the following terms:—"It is proved by the evidence that certified cheques, apparently in order and presented through the clearing house, are paid as a matter of course, and that it is not usual with bankers to turn to their customers' accounts on the day marked cheques are presented for payment through the clearing house to see whether there is anything wrong before paying them. It is, however, usual to check the returns with the customers' accounts the next day, and then to enter the cheques paid the day before. In conformity with this custom the Bank of Hamilton paid the cheque on January 27th, without looking at Bauer's account in their ledger, but on the next day they turned to it and at once discovered the fraud. The Bank of Hamilton immediately gave notice to the Imperial Bank and demanded the repayment of the \$495 overpaid." The defence was that the Bank of Hamilton was negligent in paying the forged cheque without first turning to Bauer's account, and that notice the next day was too late. There were no endorsers. The defence was overruled in all the Courts, and the practice upheld.

The Canadian Bankers' Association, incorporated in 1900 by the Act, 63-64 Victoria, chapter 93, is authorized to establish clearing houses at any place in Canada, and to make rules and regulations for their operations. The practice of presenting cheques, etc., through the clearing house is recognized, and any delay necessarily occasioned thereby would be excused. A bank may or may not become a member of the clearing house, and may withdraw if it chooses. By-law No. 16 of the Association, which is to be found in the Appendix, contains the Rules and Regulations which govern clearing houses in Canada.

The above Act, and the by-laws of the Association made in accordance with its provisions, will be found in the Appendix to the present work.

- 77. Lien on stock.**—The bank shall have a privileged lien, for any debt or liability for any debt to the bank, on the shares of its own capital stock, and on any unpaid dividends of the debtor or person liable, and may decline to allow any transfer of the shares of such debtor or person until the debt is paid.
2. The bank shall, within twelve months after the debt has accrued and become payable, sell such shares: Provided that notice shall be given to the holder of the shares of the intention of the bank to sell the same, by mailing the notice, in the post office, post paid, to the last known address of the holder, as shown by the records of the bank, at least thirty days prior to the sale.
 3. Upon the sale being made the president, a vice-president or the general manager shall execute a transfer of the shares to the purchaser thereof in the usual transfer book of the bank.
 4. Such transfer shall vest in the purchaser all the rights in or to the said shares which were possessed by the holder thereof, with the same obligation of warranty on his part as if he were the vendor thereof, but without any warranty from the bank or by the officer of the bank executing the transfer. 53 V., c. 31, s. 65. Am.

The privileged lien given to the bank by this section on its shares held by debtors is to be distinguished from the general banker's lien on securities for a general balance considered under the preceding section. The lien of the present section is the creation of the statute; that

discussed in the notes on the preceding section is part of the law merchant, and is not mentioned in the Act.

By section 43 it is provided that no transfer of shares is valid unless the holder pays off his debts and liabilities if required, or unless his remaining shares are worth more than such debts and liabilities. Section 46 provides that the officers of the bank shall not execute the transfer of shares sold under execution, until all debts, liabilities and liens in favor of the bank have been discharged.

Under a clause giving a company the right to refuse a transfer made by a shareholder indebted to the company, it was held that this meant indebted on any account: *Ex parte Stringer*, 9 Q. B. D. 436 (1882); that it also meant "indebted whether solely or jointly with others;" *Bentham Mills Co.*, 11 Ch. D. 900 (1879); and that where a bill was taken for the original debt the right existed, but the remedy was suspended until the maturity of the bill: *London, Birmingham, etc., Banking Co.*, 34 Beav. 332 (1865).

The language of this section, "any debt or liability for any debt to the bank," is so comprehensive that it would appear to include any claim of the bank under which the holder of the shares might ultimately become liable to it.

It is to be observed that the general lien of the bank on securities or deposits, independently of special contract, exists only when the debt is due and payable. See the notes to the preceding section.

The bank's lien would not have priority over an equitable interest of which it had notice before the incurring of the debt for which it claimed such privilege: *Bradford Banking Co. v. Briggs*, 12 App. Cas. 29 (1886).

The lien would exist only if the debt or liability were against the holder in the same right or interest as that in which he held the shares. For instance, if the debt or liability was personal and the stock were held by him

“ as executor, administrator, guardian or trustee of or for some person named,” as provided in section 53, or *vice versa*, there would be no lien. Even if the person represented were not named, and the shares were held by him simply “ as executor ” or “ in trust,” the principle laid down in *Bank of Montreal v. Sweeny*, 12 App. Cas. 617 (1887), and *Murray v. Pinkett*, 12 Cl. & F. 746 (1846), would prevent the bank from obtaining a lien after notice that the shares did not really belong to its debtor.

A bank has a lien on its shares held by a member of a firm for a debt due to it by such firm: *In re Chinic and Union Bank*, 14 Q. L. R. 289 (1888); also on trust shares for the debt of the trustee where the trust has not been disclosed: *New London Bank v. Brocklebank*, 21 Ch. D. 302 (1882).

The bank may waive its right of lien, but care should be taken in case it holds any sureties for the debt or liability. Article 1959 of the Civil Code says: “ The suretyship is at an end when by the act of the creditor the surety can no longer be subrogated in the rights, hypothecs and privileges of such creditor.” The English law as to suretyship is to the same effect.

The clause requiring the bank to sell the shares within twelve months after the debt has accrued and become payable was enacted in 1890. The sale should be by auction after reasonable publicity and notice. The thirty days' notice to the debtor should indicate the time and place of sale. If the bank does not exercise its right of sale under this section within twelve months after the maturity of the debt, it would then need to fall back upon any remedy that might be given to it by the law of the province. In most of the provinces it would require to get judgment and sell the shares under execution, when it would be paid by preference out of the proceeds. It would also be liable under section 145 to a penalty not exceeding five hundred dollars.

78. Sale of collaterals.—The stock, bonds, debentures or securities, acquired and held by the bank as collateral security, may, in case of default in the payment of the debt, for the securing of which they were so acquired and held, be dealt with, sold and conveyed, either in like manner and subject to the same restrictions as are herein provided in respect of stock of the bank on which it has acquired a lien under this Act, or in like manner as and subject to the restrictions under which a private individual might in like circumstances deal with, sell and convey the same: Provided that the bank shall not be obliged to sell within twelve months.

2. The right so to deal with and dispose of such stock, bonds, debentures or securities in manner aforesaid may be waived or varied by any agreement between the bank and the owner of the stock, bonds, debentures or securities. 53 V., c. 31, s. 66. Am.

The stock, bonds, debentures and securities referred to in this section are those enumerated in section 76 (c) as the ones which the bank may take as collateral security for a loan made by it; and the special securities authorized by sections 86 and 88: *Re Victor Varnish Co.*, 16 O. L. R. at p. 343 (1908).

If any such securities held by the bank as collateral security mature before the debt for which they are held as collateral, the bank has a right to collect them and apply them in payment of the debt. The present section has reference to bonds or debentures that do not mature until after the debt, and to stock and other similar securities.

The bank is bound to use due diligence and prudence in realizing on these securities. It may either proceed as is prescribed for its own shares in the preceding section, or it may avail itself of the law of the province as to the disposal of articles held in pledge, in the same way as a private individual.

Unless there be a special agreement to that effect, the bank does not acquire a title to the collateral securities on the default to pay the debt. If the collateral be a security for a sum of money the bank may collect it when due; if it be stock or a security for the payment of money it may take steps to have it sold. At English common law a pledgee may sell the pledge at public auction without judicial process on giving the debtor reasonable notice to redeem: *Tucker v. Wilson*, 1 Peere Williams 261 (1714); *Lockwood v. Ever*, 9 Modern 275 (1742); *Pothonier v. Dawson*, 1 Holt N. P. 385 (1816); *Pigot v. Cubley*, 15 C. B. N. S. 701 (1864); *Donald v. Suckling*, L. R. 1 Q. B. 585 (1866); *Deverges v. Sandeman*, [1902] 1 Ch. 579. In the Province of Quebec, in the absence of a special agreement, the bank would require to obtain judgment, and then seize and sell in the ordinary way, when it would be paid by privilege out of the proceeds: C. C. Art. 1971. The bank has the option of exercising these remedies or of pursuing the method indicated in section 77.

Where the pledgor has only a limited interest in the collateral, the bank can only sell such interest. Where there is the right to sell without judicial authority, the sale can only be made after reasonable notice of the time and place of sale, unless such notice has been waived by agreement, made when the debt was contracted, or when the time of payment was extended, as provided by the second sub-section.

Where railway bonds were deposited with a bank as collateral security to a promissory note, with a right on

default to resell "by giving notice in one daily paper, with power to the bank to buy in and resell," it was held by the Court of Appeal that the sale should be by auction, and that the bank had no power to sell by private contract. See also a discussion of what would be a proper notice: *Toronto General Trusts v. Central Ontario Ry. Co.*, 10 O. L. R. 347 (1905).

In *Healey v. Home Bank*, 2 O. W. N. 550; 18 O. W. R. 71 (1911), it was held by a Divisional Court, that a private sale by the bank, after the notice prescribed by the last section, of South African land warrants pledged to it as collateral security, was valid.

79. Acquiring real estate.—The bank may acquire and hold real and immovable property for its actual use and occupation and the management of its business, and may sell or dispose of the same, and acquire other property in its stead for the same purpose.

2. The bank shall annually, during the month of January, make to the Minister a return showing in detail the fair market value of its real and immovable property held under this section. 53 V., c. 31, s. 67. Am.

This would not prevent the bank from buying, leasing, or erecting a larger building than was needed for its own business, and renting the portion which it did not actually require. The validity of the transaction would turn upon whether it was acquired *bona fide* for its own business, or whether it was entered into as a speculation in violation of the Act: *Horsey's Claim*, L. R. 5 Eq. 561 (1868). The bank must be the sole judge of what is required for the purpose of its business: *Montreal and St. Lawrence L. & P. Co. v. Robert*, [1906] A. C. 196.

Sub-section 2 was added at the late revision after a discussion in which it was charged that banks were

erecting large office buildings as real estate speculations in violation of the spirit of section 76. The penalty for neglect is \$50 a day: sec. 147B.

80. Mortgages as additional security.—The bank may take, hold and dispose of mortgages and hypothèques upon real or personal, immovable or movable property, by way of additional security for debts contracted to the bank in the course of its business.

2. The rights, powers and privileges which the bank is by this Act declared to have, or to have had, in respect of real or immovable property mortgaged to it, shall be held and possessed by it in respect of any personal or movable property which is mortgaged or hypothecated to the bank. 53 V., c. 31, s. 68.

This section is substantially the same as that in the Bank Act of 1850, of the old Province of Canada, which has been continued in the succeeding Acts. By section 76 a bank is prohibited, except as authorized by the Act, from lending money or making advances upon the security, mortgage, or hypothecation of any lands, tenements or immovable property, or of any ships or other vessels, or upon the security of any goods, wares and merchandise. The present section contains some of the exceptions. A bank may not lend money upon such security; but it may take mortgages upon such property by way of additional security for debts contracted to the bank in the course of its business.

This section does not relieve a bank from any of the provisions of the provincial laws respecting such mortgages. Its effect is simply to relieve a bank to the extent indicated from the prohibition of section 76, and to allow it to take by way of additional security what an individual might take as a primary security, and

subject to the provincial law, as to form, regulation, priority, etc.

It will be observed that the expression used is “debts contracted” and not “debts previously contracted,” as in the National Banking Act of the United States. Our jurisprudence has not been uniform as to whether our Act should be construed in the same sense as that of the United States. All are agreed that a mortgage cannot be taken to secure future advances. Opinions differ as to whether it can be taken to secure a debt contracted simultaneously with the taking of the mortgage as additional security. The weight of authority would appear to be that possibly it may be taken at the same time, provided it be clear that the money is not really advanced on the security of the mortgage. In a simultaneous transaction the presumption would be against its validity, and if only a very short time intervened this might be taken as a suspicious circumstance.

This question was discussed in two cases—one in Upper Canada before Confederation, and the other in Quebec since that event. In the former of these cases, *The Commercial Bank v. Bank of Upper Canada*, 7 Grant (1859), at page 430, Chief Justice Robinson says: “It is quite true that whenever the money is advanced, whether it be just before or at the time of making the mortgage, then there is literally a debt due, but not a debt contracted in the course of the business of the bank, that is, of its legitimate and proper business, which the lending money upon mortgage of real property certainly cannot be, until the statutes are repealed or altered. When it is shown that the mortgage in any case was taken by a bank “as an additional security for a debt contracted to it in the course of its business,” then the question occurs whether that can only be taken to mean a debt that had been previously incurred with it in the course of its business, or whether a mortgage may not be taken as an additional security for a debt that had no previous existence, but which the bank was about to allow a party

to contract, by advancing him money at that time in the proper course of their business. . . . I think it might perhaps be held that the spirit and intention of the Act are not opposed to it, and that a mortgage so taken might be upheld, when it appears that the mortgage was really and in truth taken to secure the transaction upon the bill, and not that the bill was created for the mere purpose of upholding and giving color to the mortgage. That would be a question of fact, upon which the conclusion that a jury might come to would be in general so uncertain that I dare say the banks will not think it prudent to risk their money on a real security in any such case, where the nature of the transaction might appear to be at all equivocal—so long, I mean, as the present statutes continue in force.”

In the Quebec case, *Bank of Toronto v. Perkins*, 1 Dorion 362 (1881), Dorion, C.J., in giving the judgment of the Court, said: “ I am of opinion that the transfer made to the appellant of a mortgage to secure an advance made on a promissory note discounted at the same time that the transfer was made, is an evasion of the Banking Act, 34 Vict. chap. 5, sec. 40, which forbids banks to advance on the security of real estate, and that this prohibition being in the public interest, a law of public policy, the transfer made by Bonnell to the appellant was null and void. The whole policy of the law is against such transactions. The one under consideration cannot come under section 41 of the Act, for it is not a debt contracted in the ordinary course of its business. Banks do not usually take mortgages to secure the notes which they discount. Section 41 of the Banking Act is not for the purpose of nullifying the disposition contained in the 46th section, but merely to enable the bank to secure themselves against the possibility of a loss by reason of a change in the position of the debtor or his indorsers, after the loan has been made.”

This case was taken to the Supreme Court, where the judgment holding the mortgage to be invalid was

affirmed. The language of some of the Judges would seem to imply that they considered the transaction void, because the mortgage was taken at the same time as the note was discounted, or rather before, while some of the others were not prepared to put it on that ground. All of them, however, agreed that the real transaction was a loan upon the security of the mortgage, which was a violation of the Banking Act, and consequently void: 8 S. C. Can. 603 (1883).

The above case was followed in *Canadian Bank of Commerce v. McDonald*, 3 Western L. R. 90 (1906), where it was held that mortgages taken at the time of, or immediately after, the advance by the bank, were invalid under this section, but that the loan was not illegal and the bank was entitled to judgment for the money it had advanced. Also followed in *Thien v. Bank of B. N. A.*, 4 Alta. 228 (1912).

This section of the Act does not purport to give a bank any right under a mortgage upon real or personal property beyond what might be claimed by an individual under the law of the province where the transaction takes place; so that the provincial law as to the form of the mortgage, its registration, etc., would apply. Thus in the Province of Quebec, where the law does not recognize chattel mortgages or mortgages on personal property, the present section would not make them valid or legal in favor of a bank even as an additional security. This, of course, is apart from the rights under the security of standing timber and timber licenses: sec. 84; and advances for building ships: sec. 85; and under bills of lading and warehouse receipts: sec. 86; and under the assignment by way of security: sec. 88.

Vessels being personal property the present section would authorize the taking of mortgages on them by way of additional security. Those upon British vessels are governed by the Imperial Merchant Shipping Act, 1894, 57-58 Vict. chap. 60, sec. 31; those upon Canadian vessels by R. S. C. chap. 113. As to mortgages on vessels for advances for their construction, see sec. 85 of this Act.

The bank may take such mortgages as additional security from its debtor, either by taking from him a mortgage on his own property, or by taking from him an assignment of a mortgage which he holds on the property of another, or by taking it as additional security from a third party.

The powers which a bank may exercise with respect to real estate on which it holds a mortgage are set out in sections 81, 82 and 83. All the powers conferred by these sections as to such real estate are by this section made applicable to personal property as well. This would include the right to deal with and dispose of such property in the same manner as individuals would have the right to do.

A question may arise as to whether the word "debts" is here used in the narrower sense of the English law as a sum of money due, or in the broader sense of an obligation or liability as in the civil law. For example, if a bank agreed to purchase debentures to be delivered at a future time, could it take a mortgage on real or personal property as additional security for the debt or liability thus contracted? It is possible that the meaning given to the word debt in this connection might be governed by the law of the province. In the case of *Carver v. Braintree*, 2 Storey's U. S. Circuit Court Reports, 432 (1843), it was held that in a statute making members of a corporation personally liable for "debts contracted" by the corporation, the words included not only debts in the narrower or technical sense but any liabilities incurred by the corporation. See to the same effect *Mill Dam Foundry v. Hovey*, 21 Pickering (Mass.) 417 (1839).

ILLUSTRATIONS.

1. The act of 1842 authorized banks to hold mortgages and hypothèques on real estate and property as additional security for debts contracted with them in the course of their dealings. This was held to mean

real property only, and refer to pre-existing debts: *McDonell v. Bank of Upper Canada*, 7 U. C. Q. B. 252 (1850).

2. The Bank of Upper Canada having by its charter no right to hold vessels, either as owner or mortgagee, is not liable for supplies to the vessel, either on implied assumpsit or the promise of the directors: *Lyman v. Bank of Upper Canada*, 8 U. C. Q. B. 354 (1852).

3. Mortgages may be taken as additional security simultaneously with the discount of notes to which they are collateral: *Commercial Bank v. Bank of Upper Canada*, 7 Grant 250 (1859).

4. The Bank of Upper Canada was held entitled to take as security, for previous advances, the interest of a railway company in a contract for the construction of certain cars, and to lease them to the railway company: *Bank of Upper Canada v. Killaly*, 21 U. C. Q. B. 9 (1861).

5. An unregistered chattel mortgage taken as additional security upheld against an assignee in insolvency: *Bank of Montreal v. McWhirter*, 17 U. C. C. P. 506 (1867).

6. A customer deposited title deeds with a bank. He swore that the mortgage thereby created was to secure future advances; the manager of the bank that it was as additional security for past indebtedness. The legality of the latter position and the banker's knowledge of the law were circumstances that partly led the Court to accept this view: *Royal Canadian Bank v. Cummer*, 15 Grant 627 (1869).

7. A mortgage was taken by a bank as additional security for notes under discount, and renewals. Sums were paid in on other transactions, and these notes were paid by cheques drawn against the proceeds of other discounted notes. Held, that this mode of keeping the accounts had not operated as a discharge of the mortgage debt: *Cameron v. Kerr*, 3 Ont. A. R. 30 (1878); *Dominion Bank v. Oliver*, 17 O. R. 402 (1889).

8. A mortgage or pledge of timber limits in Quebec "for advances made and to be made" by a bank, is valid as to the former, and invalid as to the latter: *Grant v. Banque Nationale*, 9 O. R. 411 (1885).

9. Where a bank has taken a chattel mortgage as additional security, it may arrange for a sale and disposal of the mortgaged property. This is not a dealing in goods, but a realization of its securities: *Stewart v. Union Bank*, 15 Ont. A. R. 749 (1888).

10. An indorser took a mortgage on real estate belonging to a company to secure his indorsements of the company's paper discounted by a bank. He assigned the mortgage to the bank before the contemplated indorsements. This was not a violation of section 45 of the Bank Act, R. S. C. chap. 120: *Essex Land Co., Trout's Case*, 21 O. R. 367 (1891).

11. A bank took a mortgage on real estate as additional security to secure notes. An indorser of one of the notes being sued, pleaded that the bank had released some of the land without his consent. It was held that this was no defence to the action on the note, but the Court reserved his right to make the bank account to him for its dealings with the property when the security had answered its purpose, or the debt was paid by the sureties, or the application of the moneys from the security could be properly ascertained: *Molsons Bank v. Heilig*, 26 O. R. 276 (1895).

12. A bank may take an assignment of debts as additional security: *Rennie v. Quebec Bank*, 3 O. L. R. 541 (1902).

13. Where mortgages were taken by a bank as additional security for debts due by the mortgagor, and also as collateral to future advances by the bank to him, they were held to be good as to the debts actually due although bad as to the future advances, and also good as to interest on the past due debts, taxes on the mortgaged

properties, etc.: *Thomson v. Stikeman*, 29 O. L. R. 146 (1913).

14. An assignment of a mortgage taken colorably as additional security on the discounting of a note, when the advance was in reality made on the security of the mortgage, is null: *Bank of Toronto v. Perkins*, 8 S. C. Can. 603 (1883); *Canadian Bank of Commerce v. McDonald*, 3 Western L. R. 90 (1906).

15. Where an accommodation indorser paid to a bank a note that had been discounted, he was held entitled to a mortgage on real estate given by the maker to the bank as collateral. It was urged in review for the first time that this mortgage was null as having being given for future advances. This claim was not allowed, not having been pleaded or legally proved: *McCaffrey v. La Banque du Peuple*, Q. R. 5 S. C. 135 (1894).

16. A chattel mortgage taken simultaneously with the discount of a note by a bank is void: *Bathgate v. Merchants Bank*, 5 Man. R. 210 (1888).

17. A debtor to a bank mortgaged to it certain stock in trade, and all future stock to be acquired during the currency of the mortgage, and assigned book debts, and agreed to assign all future book debts of the business as security for the debt of the bank. The chattel mortgage, besides the usual proviso for redemption, seizure and sale in case of default, etc., and for application of the proceeds, and covenants for payment, contained a covenant on the part of the bank to pay the then commercial indebtedness of the mortgagor, and the expense of running the business out of the proceeds of the sale of the stock, and the book accounts and debts; but not so as to increase the then indebtedness to the bank, all moneys received being paid into the bank. When default occurred the bank took possession and sold, there not being enough to pay what was due to it. It was held that the securities taken were valid under the Bank Act, R. S. C. chap. 120, and that the debtor could not compel the bank

to pay the other creditors or to share with them: *Gillies v. Commercial Bank*, 10 Man. R. 460 (1895).

18. Where a bank has taken a bill of sale of horses as additional security for a debt and sold some of the horses to the defendant and took his notes therefor, the bank is entitled to recover on such notes: *Bank of Hamilton v. Donaldson*, 13 Man. R. 378 (1901).

19. A customer of a bank gave a mortgage by the deposit of title deeds to secure advances to be made. This was *ultra vires*, but afterwards, when the bank sued, on condition of its not taking judgment, he agreed that the deeds should be a security for the sum for which judgment was about to be signed. This was held to be a valid security for a debt previously incurred: *National Bank of Australasia v. Cherry*, L. R. 3 P. C. 299 (1870).

20. The charter of a bank prohibited its making advances on merchandise. A statute allowed owners of sheep to give a preferential lien on the clip of wool from season to season. It was held that such a lien given to the bank for advances was valid: *Ayers v. South Australian Banking Co.*, L. R. 3 P. C. 548 (1871).

81. Purchases of realty.—The bank may purchase any lands or real or immovable property offered for sale—

- (a) under execution, or in insolvency, or under the order or decree of a court, as belonging to any debtor to the bank; or,
- (b) by a mortgagee or other encumbrancer, having priority over a mortgage or other encumbrance held by the bank; or,
- (c) by the bank under a power of sale given to it for that purpose, notice of such sale by auction to the highest bidder having been first

given by advertisement for four weeks in a newspaper published in the county or electoral district in which such lands or property is situate, in cases in which, under similar circumstances, an individual could so purchase, without any restriction as to the value of the property which it may so purchase, and may acquire a title thereto as any individual, purchasing at sheriff's sale, or under a power of sale, in like circumstances could do, and may take, have, hold and dispose of the same at pleasure. 53 V., c. 31, s. 69. Am.

This section does not purport to interfere with the laws of the several provinces which contain varying provisions relating to the sale and purchase of mortgaged real property. It simply puts a bank in the same position as an individual creditor with reference to purchasing real property belonging to its debtors, or on which it has a mortgage or other encumbrance. This is one of the matters within the exclusive jurisdiction of the provincial legislatures under section 92 (13) and (14), relating to property and civil rights, and the administration of justice.

Before 1890 the Bank Acts did not contain the above words authorizing the bank to purchase lands "offered for sale by a mortgagee or other encumbrancer having priority over a mortgage or other encumbrance held by the bank." An individual having a second mortgage has the same right to purchase as a stranger, and to buy the property at less than its value, even if he himself be in actual possession when the sale is held: *Shaw v. Bunny*, 33 Beav. 494 (1864); *Kirkwood v. Thompson*, 12 L. T. N. S. 811 (1865); *Harron v. Yernen*, 3 O. R. at p. 133 (1883). A mortgagee exercising the power of sale cannot become the purchaser either directly or indirectly.

A power of sale in a mortgage is something unknown to the law of Quebec. The nearest approach to it would perhaps be a power of attorney to sell, and even this is not used. Even if anything of the kind were attempted the section would not give the bank the right to purchase the mortgaged lands, as under similar circumstances in Quebec a private individual could not so purchase. The regular remedy would be for the bank to sue on its mortgage, and then to have the lands seized and sold by the sheriff, unless they are brought to sale by another execution creditor. The plaintiff or any other creditor may buy the property at the sheriff's sale. Such a sale purges the land of hypothecary and other privileged claims, creditors ranking on the proceeds according to their respective priorities.

The bank may also purchase personal or movable property mortgaged or hypothecated to it, when brought to sale in the manner pointed out in this section: sec. 80.

82. Title to mortgaged property.—The bank may acquire and hold an absolute title in or to real or immovable property mortgaged to it as security for a debt due or owing to it, either by the obtaining of a release of the equity of redemption in the mortgaged property, or by procuring a foreclosure, or by other means whereby, as between individuals, an equity of redemption can, by law, be barred, or a transfer of title to real or immovable property can, by law, be effected, and may purchase and acquire any prior mortgage or charge on such property.

2. Nothing in any charter, Act or law shall be construed as ever having been intended to prevent or as preventing the bank from acquiring and holding an absolute title to and

in any such mortgaged real or immovable property, whatever the value thereof, or from exercising or acting upon any power of sale contained in any mortgage given to or held by the bank, authorizing or enabling it to sell or convey any property so mortgaged. 53 V., c. 31, s. 71; 63-64 V., c. 26, s. 14.

The terms "equity of redemption," and "foreclosure" used in this section are unknown to Quebec law, and the means indicated are not applicable to that province. There a mortgage is a mere pledge or *hypothèque* of the property; the ownership and title remain in the mortgagor. As mentioned under the last section, a mortgage creditor there realizes on his mortgage by getting judgment, issuing execution, seizing and selling the mortgaged property by the sheriff.

Under the last clause of sub-section 1 the bank could acquire prior mortgages in Quebec as well as in other provinces; and although the language of the first part of that sub-section is inapt, it would probably be held to be sufficient to authorize the bank to receive from the mortgagor a surrender or transfer of his rights or interest in the property.

Before these rights had been expressly conferred on banks, it was held that they had been impliedly given: *Bank of Upper Canada v. Scott*, 6 Grant 451 (1858). See to the same effect: *Bank of New South Wales v. Campbell*, 11 App. Cas. 192 (1886).

By section 80, a bank has like powers as to personal property mortgaged or hypothecated to it.

83. Immovable property to be sold.—No bank shall hold any real or immovable property, howsoever acquired, except such as is required for its own use, for any period exceeding

seven years from the date of the acquisition thereof, or any extension of such period as in this section provided, and such property shall be absolutely sold or disposed of, within such period or extended period, as the case may be, so that the bank shall no longer retain any interest therein unless by way of security.

2. The Treasury Board may direct that the time for the sale or disposal of any such real or immovable property shall be extended for a further period or periods, not to exceed five years.
3. The whole period during which the bank may so hold such property under the foregoing provisions of this section shall not exceed twelve years from the date of the acquisition thereof.
4. Any real or immovable property, not required by the bank for its own use, held by the bank for a longer period than authorized by the foregoing provisions of this section, shall be liable to be forfeited to His Majesty for the use of the Dominion of Canada: Provided that—
 - (a) no such forfeiture shall take effect until the expiration of at least six calendar months after notice in writing to the bank by the Minister of the intention of His Majesty to claim the forfeiture; and,
 - (b) the bank may, notwithstanding such notice, before the forfeiture is effected, sell or dispose

of the property free from liability to forfeiture.

5. The provisions of this section shall apply to any real or immovable property heretofore acquired by the bank and held by it at the time of the coming into force of this Act. 63-64 V., c. 26, s. 14.

The first part of the above sub-section 1 providing that a bank shall not hold any real property not required for its own use more than seven years, was a proviso to section 70 of the Act of 1890. As pointed out in the first edition of this work, no penalty was provided except one of \$500, and nothing was said as to what would become of the property. This was remedied in 1900 by enacting the remainder of the section which was made retroactive.

84. **Loans on standing timber.**—The bank may lend money upon the security of standing timber, and the rights or licenses held by persons to cut or remove such timber. 63-64 V., c. 26, s. 16.

This is an addition to the general powers of a bank as found in section 76. The authorization of loans upon the security of standing timber may be said to be a derogation from the prohibition to lend upon the security of land or immovable property, contained in the latter part of that section, as standing timber is land. The security of standing timber or of timber licenses is not put upon the same footing as mortgages upon real or personal property. A bank is only authorized to take the latter as additional security for debts contracted to it in the course of its business. Nor is it authorized to deal with such timber or licenses as it may do with negotiable securities. It may deal in, discount, lend money and make advances upon these latter or take them as collateral security. As to the former the present section merely authorizes the bank to lend money upon them.

Under the Bank Act of 1871, it was held in *Grant v. La Banque Nationale*, 9 Q. R. 411 (1885), that as to advances on timber limits before the pledge was made the security was valid; but that as to future advances the pledge of the limits was invalid.

Such rights or licenses have been sometimes treated as personal and sometimes as real property. For a full discussion of the question in so far as the law of Ontario is concerned, see *Hoeffler v. Irwin*, 8 O. L. R. 740 (1904), where it was decided by the Court of Appeal that they were an interest in land. In *McPherson v. Temiskaming*, [1913] A. C. 145, the matter was finally settled by the Privy Council in the same sense. This last judgment followed *Glenwood Lumber Co. v. Phillips*, [1904] A. C. 405, an appeal from Newfoundland where the licenses were similar to those of Ontario. Those of most if not all the other provinces are to the same effect.

The form in which the security should be taken would require to comply with the laws and regulations of the province where the timber was situate. The Act has not prescribed any form. The regulations of the provincial government which issued them, and the local laws as to registration, priority, etc., would govern.

The time limit prescribed by section 83 would apply to this section.

84A. Loans to receivers and liquidators.—The bank may lend money to a receiver, to a receiver and manager, or to a liquidator appointed under any winding-up Act, provided such receiver, receiver and manager or liquidator has been duly authorized or empowered to borrow; and, in respect of any money so lent, the bank may take security, with or without personal liability, from such receiver, receiver and manager, or liquidator, to such an

amount, and upon such property and assets, as may be directed or authorized by any court of competent jurisdiction. New.

In this section a receiver would include a person appointed to take charge of property in litigation by way of equitable execution, and under the equitable jurisdiction of the Court in those provinces where the laws are based upon the law of England, or under provincial legislation such as section 17 of the Ontario Judicature Act of 1913, chapter 19, or in the province of Quebec under Article 955 of the Code of Civil Procedure. Where the property in question is a going business and it is desirable to preserve the good will, he may be given power to carry it on, and is then usually called receiver and manager. These names are also applied to persons put in charge of property or business at the instance of holders of bonds or debentures of companies where default has been made under the provisions of the mortgage deed.

Under the Dominion Winding-up Act, R. S. C. chap. 144, sec. 34, "The liquidator may, with the approval of the Court . . . (b) carry on the business of the company so far as is necessary to the beneficial winding-up of the same." The section would also apply to a provincial winding-up Act, even if the official were not called a liquidator, but called a curator as in New Brunswick or by some other name. The question in each case would be whether the law gave him power to borrow and whether the necessary conditions were complied with.

The section is a new one, but it is probably declaratory of the old law. The bank had always power to lend to one who had the legal right to borrow, subject to the limitations and restrictions imposed by the Act. Notwithstanding the general language of the section, the conditions imposed by the Act as to when and how the bank may lend upon particular securities such as mortgages, bills of lading, warehouse receipts, etc., will apply

to the loans authorized by this section. The Court names the amount of the loan, and the property and assets to be given as security; but is not authorized to override the prohibitions of the Act.

85. Advances for shipbuilding.—Every bank advancing money in aid of the building of any ship or vessel shall have the same right of acquiring and holding security upon such ship or vessel, while building and when completed, either by way of mortgage, hypothec, hypothecation, privilege or lien thereon, or purchase or transfer thereof, as individuals have in the province wherein the ship or vessel is being built.

2. The bank may, for the purpose of obtaining and enforcing such security, avail itself of all such rights and means, and shall be subject to all such obligations, limitations and conditions as are, by the law of such province, conferred or imposed upon individuals making such advances. 53 V., c. 31, s. 72.

The provisions of this section were first embodied in the Bank Act in 1872, and are an exception to the prohibition to a bank in section 76, to lend money or make advances on a ship or other vessel. It will be seen that the restrictions imposed on advances by banks on other kinds of property are removed, and the mortgage or other security may be taken either before, or at the time of, or subsequent to the advance, and either during the building or after the completion of the vessel, and need not be an additional security, but may be taken as a primary security. It also allows the bank to purchase the vessel to secure its advances. In addition to the rights thus given under provincial laws, the Dominion Act respecting the Registration of Ships, R. S. C. chap. 113,

contains important provisions which by the present section are made applicable to banks. A ship about to be built, or being built, may be recorded with the nearest registrar of shipping, and a mortgage given for advances in aid of its building in the form contained in a schedule to the Act. Section 62 of the Act specially provides that deeds and documents relating to this matter in the Province of Quebec may be in notarial form.

Vessels being personal property, banks may, in addition to the rights conferred by this section, take a mortgage upon them by way of additional security under section 80. The provisions of R. S. C. chap. 113, above referred to, are enacted by the Dominion Parliament under the authority given it by section 91 of the British North America Act to make laws relating to Navigation and Shipping.

86. Warehouse receipts and bills of lading.—The bank may acquire and hold any warehouse receipt or bill of lading as collateral security for the payment of any debt incurred in its favour, or as security for any liability incurred by it for any person, in the course of its banking business.

2. Any warehouse receipt or bill of lading so acquired shall vest in the bank, from the date of the acquisition thereof,—

(a) all the right and title to such warehouse receipt or bill of lading and to the goods covered thereby of the previous holder or owner thereof; or,

(b) all the right and title to the goods, wares and merchandise mentioned therein of the person from whom such goods, wares and merchandise were received or acquired by the bank,

if the warehouse receipt or bill of lading is made directly in favour of the bank, instead of to the previous holder or owner of such goods, wares and merchandise. 53 V., c. 31, s. 73; 63-64 V., c. 26, s. 15. Am.

The words "or as security for any liability incurred by it for any person" in the fifth and sixth lines were added by section 15 of the Act of 1900 to what was the first sub-section of section 73 of the Act of 1890.

The bank can only acquire a warehouse receipt or bill of lading as collateral security if the bill, note, debt or liability is negotiated or contracted at the time of the acquisition thereof by the bank, or upon the written promise or agreement to give to the bank such warehouse receipt or bill of lading: sec. 90.

This section may be said to contain another exception to the rule laid down in section 76, that except as authorized by the Act, no bank shall lend money on the security of any goods, wares or merchandise. The bank cannot purchase or discount the warehouse receipt or bill of lading, it can only take them as collateral security. Section 90 sets out the precise terms and conditions on which they may be taken by a bank. They may either be made out directly in favor of the bank, or they may be negotiated to it by indorsement or delivery, as the case may be.

For the definition of "bill of lading," "goods, wares and merchandise," and "warehouse receipt," as used in the Act, see section 2 (*c*), (*g*) and (*p*).

Mortgages of real and personal property treated of in the preceding sections are such instruments as are recognized by that name under the laws of the respective provinces. The Act only authorizes banks to use them in part as individuals may under the respective provincial laws. Warehouse receipts and bills of lading in the present section and the "security" mentioned in section 88,

on the other hand, are instruments defined in the present Act and may be in conflict with the laws of the various provinces. This has given rise to a constitutional question as to how far the Dominion Parliament, under the sub-sections of section 91 of the British North America Act relating to "Banking," "Shipping" or the "Regulation of Trade and Commerce," can legislate on the subjects of warehouse receipts or bills of lading, and whether such legislation is valid when it conflicts with that of the provinces legislating on the same subjects under the authority of section 92 regarding "Property and Civil Rights."

In Ontario the legislation regarding warehouse receipts and bills of lading is found in The Mercantile Law Amendment Act, R. S. O. 1914, c. 133. In Quebec it is to be found in R. S. Q., Arts. 5643-5650. The foundation of both these Acts was in the Consolidated Statutes of Canada, 1859, chap. 54, which provided that such documents should be transferable by indorsement. In Ontario there has been subsequent legislation which is embodied in the Mercantile Law Amendment Act above cited. In Quebec the law in force in the former Province of Canada at Confederation remains unchanged.

In the case of *Smith v. Merchants Bank*, 8 Ont. A. R. 15 (1883), the Judges of the Court of Appeal were of opinion that the Bank Act of 1871, in so far as it was in conflict with the law of Ontario on the subject, was invalid. Their judgment was, however, reversed in the Supreme Court: 8 S. C. Can. 512 (1884). The point was again raised in *Tennant v. Union Bank*, 19 Ont. A. R. 1 (1892). It was not argued in the Court of Appeal, as that Court was bound by the decision of the Supreme Court on the subject. In the Privy Council it was held that, although the warehouse receipts in question were not valid securities under the provisions of the Ontario Mercantile Amendment Act, the Dominion Bank Act validated them. It also held that sub-section 15 of section

91 of the B. N. A. Act, relating to Banking, gave to the Dominion Parliament power to legislate respecting every transaction within the legitimate business of a banker, notwithstanding that the exercise of such power interferes with "property and civil rights in the province," and confers upon a bank privileges as a lender which the provincial law does not recognize. Also, that legislation of the Dominion Parliament, so long as it strictly relates to the subjects enumerated in section 91, is of paramount authority even though it trenches upon the matters assigned to the provincial legislatures by section 92: *Tennant v. Union Bank*, [1894] A. C. 31.

It is to be observed that the conflict has arisen largely from the fact that successive Bank Acts, beginning with 1871, have introduced changes regarding the person who might give such a receipt, the class of property that might be covered by it, the place where the property might be kept and the like, most of the changes being in the direction of giving greater facilities, while corresponding changes were not made in the provincial laws regarding warehouse receipts in general.

Section 54 of the Bank Act, R. S. C. (1886) chap. 120, provided that the person granting a warehouse receipt might be the owner of the goods covered by it. In the present Act, the term warehouse receipt is only applied where the person granting it is not the owner of the goods. Section 88 provides for the case where they are the same person, and the instrument is simply called a "security." Not only the person who may grant this security, but also the kind of goods for which it may be granted, differ from the classes of persons and goods named in section 54.

A bank should be careful in taking a warehouse receipt to see that it complies with the definition in section 2 (*p*) (*i*); and that the facts and circumstances connected with its issue and the document itself bring it as far as practicable within one or other of the classes marked

(ii) and (iii) respectively. Section 90 indicates the conditions under which a bank may acquire a warehouse receipt.

A warehouse receipt or bill of lading can only be taken as collateral security for the payment of a debt incurred in favor of a bank or as security for some liability incurred by it in the course of its banking business, that is, business done by it in accordance with the terms of the Bank Act. The collateral security need not be furnished by the principal debtor; it may be for the payment of any debt, or for any liability incurred by or for any person.

A bank is bound to exercise ordinary diligence and care in looking after property which may be pledged to it in any of the ways authorized by the Act. As long as it does so, it is not liable for the loss of the property or for any damage done to it; nor is it prevented from suing for any amount of the secured debt: *Coggs v. Bernard*, 2 Ld. Raymond 909 (1703).

If the goods are held by the warehouseman or carrier to order the warehouse receipt or bill of lading is transferred by endorsement and delivery; if held for bearer, or if endorsed in blank it is transferable by delivery alone.

Every person wilfully making a false statement in a warehouse receipt or bill of lading given to a bank is liable to imprisonment for a term not exceeding two years: sec. 143.

Sub-section 2 provides that when a bank acquires a warehouse receipt or bill of lading as aforesaid it shall vest in the bank from the date of the acquisition thereof all the right and title to the instrument and to the goods covered thereby of the previous holder or owner; and if the instrument is issued directly in favour of the bank all the right and title to the goods mentioned therein of the person from whom the same were received or acquired by the bank.

After the acquisition by the bank of the instrument the previous holder or owner cannot give to any third party, nor can any creditor of such previous holder, or other person acquire any claim upon the goods that will have priority over the claim of the bank.

Up to the time of the acquisition of the instrument by a bank the transaction or transactions relating to the instrument and the property covered by it would be governed by the provincial law as relating to "property and civil rights"; upon such acquisition the Dominion law would govern and would override any provincial law that might otherwise affect it: *Tennant v. Union Bank*, [1894] A. C. 31; *Traders Bank v. Brown*, 18 Q. R. 430 (1889). Section 89, s.-s. 3, indicates how a bank may realize on such goods.

ILLUSTRATIONS.

1. Where there is a usage of trade authorizing it, a warehouse receipt may cover flour subsequently brought into the warehouse in the place of a similar quantity removed: *Wilmot v. Maitland*, 3 Grant 107 (1851). So of a bill of lading for wheat ground into flour: *Mason v. G. W. Ry. Co.*, 31 U. C. Q. B. 73 (1871).

2. A document in the following form, without any indorsement, is not a warehouse receipt under Con. Stat. Canada, chap. 54, or the Amending Act of 1861: "Received in store at our warehouse at . . . from sundry parties, 17,900 lbs. batting, to be delivered pursuant to the order of the Bank of British North America, to be indorsed thereon. The said batting is separate from" etc., etc.: *Bank of British North America v. Clarkson*, 19 U. C. C. P. 182 (1869). Followed in *Royal Canadian Bank v. Miller*, 29 U. C. Q. B. 266 (1870).

3. A shipper of flour sold it and delivered two bills of lading endorsed by him in blank to the purchaser, who got a bill discounted by a bank to pay for the flour,

and attached to it one copy of the bill of lading as collateral. A person holding the other copy of the bill of lading got possession of the flour and disposed of it. It was held that a bill of lading signed by the purser was valid, that an indorsement of it in blank was sufficient under C. S. C. chap. 54, and that the bank was entitled to recover the full value of the flour: *Royal Canadian Bank v. Carruthers*, 29 U. C. Q. B. 283 (1870).

4. Where the usage of trade is that grain of the same quality received from different persons is stored together and mixed, a warehouse receipt covers the specified quantity of the quality mentioned: *Coffey v. Quebec Bank*, 20 U. C. C. P. 555 (1870); *Bank of Hamilton v. Noye Mfg. Co.*, 9 O. R. 631 (1885).

5. Where a bank held a warehouse receipt signed by the clerk of a warehouseman and indorsed by the latter, it was held that the receipt was invalid as the clerk was not a warehouseman, and the bank was not entitled to recover on an insurance policy assigned to it by the warehouseman: *Todd v. Liverpool Insurance Co.*, 20 U. C. C. P. 523 (1870).

6. The holder of warehouse receipts of grain had it insured, and then indorsed the warehouse receipts to a bank as collateral security. It was held that under the Dominion Act, 31 Vict. chap. 11, sec. 7, the property in the grain passed to the bank and he would not recover on a policy insuring him as owner: *McBride v. Gore Insurance Co.*, 30 U. C. Q. B. 451 (1870).

7. A shipping note given by the agent of a railway is a bill of lading within the Ontario Statute, 33 Vict. chap. 19, sec. 3. A bank is entitled to recover as indorsee without alleging that it received the bill of lading as collateral: *Royal Canadian Bank v. Grand Trunk Ry. Co.*, 23 U. C. C. P. 225 (1873).

8. A warehouse receipt indorsed to a bank for "40 bales of corks" not distinguishing by separate marks or values, held not to cover corks received in the warehouse

after its date to replace others taken out, the bales having distinguishing marks and being of various values: *Llado v. Morgan*, 23 U. C. C. P. 517 (1874).

9. Incurring liability, as for instance, giving an accommodation note, is not contracting a debt, for securing which a warehouse receipt may be taken: *Cockburn v. Sylvester*, 1 Ont. A. R. 471 (1877); overruling *Re Coleman*, 36 U. C. Q. B. 559 (1875).

10. Where warehouse receipts were indorsed to a bank as collateral security, it was held that the indorser has still an insurable interest in the goods: *Parsons v. Queen Ins. Co.*, 29 U. C. C. P. 188 (1878).

11. The provisions as to warehouse receipts in the Bank Act do not apply to foreign banks: *Commercial National Bank v. Corcoran*, 6 O. R. 527 (1884).

12. The giving to the bank of warehouse receipts as security for advances to the company in question was held not to be such a hypothecating, mortgaging or pledging of the company's property as required a by-law sanctioned by the shareholders under the Letters Patent Act: *Merchants Bank v. Hancock*, 6 O. R. 285 (1884).

13. Where a bank advanced money to consignees to pay the draft attached to a bill of lading and returned the latter to the consignees, who stored the grain and delivered the warehouse receipt to the bank it was held entitled to the grain as against execution creditors of the consignees: *Dominion Bank v. Davidson*, 12 Ont. A. R. 90 (1885).

14. A bank took several warehouse receipts as collateral security for notes discounted. The bank sold the goods, and the proceeds were more than the amount of the discounted paper. It claimed the right to apply the surplus on other debts of the customer, under a parol agreement. It was held that the bank had a right to do so: *Thompson v. Molsons Bank*, 16 S. C. Can. 664 (1889).

15. A firm of saw millers obtained from a bank advances on promissory notes indorsed by them. To the maker of the notes they gave warehouse receipts on logs, described as being in certain lakes in transit to the mills, and subsequently, in pursuance of a written agreement when the advances were made, gave warehouse receipts of the lumber manufactured from the logs. The maker of the notes indorsed the receipts to the bank. It was held that they were bad as to the logs, the lakes not being "places kept by the signers of the receipts," and good as to the lumber: *Tennant v. Union Bank*, 19 Ont. A. R. 1 (1892).

16. A commission firm composed of three partners stored some of its goods with a separate warehousing firm composed of two of the three. One of the warehousing firm gave receipts in its name to the third partner of the commission firm for these goods and he transferred them to a bank as collateral security for notes of the commission firm which it discounted. Held, that as the two firms were separate entities the transaction was valid: *Ontario Bank v. O'Reilly*, 12 O. L. R. 420 (1906).

17. A warehouseman is not liable for a loss resulting from a cause the danger and risk of which was made known to the owner of the goods at the time they were warehoused: *Fry v. Quebec Harbour Commissioners*, Q. R. 9 S. C. 14 (1896).

18. Goods held under a duly indorsed warehouse receipt as collateral security for advances may be properly and legally insured as being the property of the holder of such receipt, who had made advances on it: *Wilson v. Citizens Ins. Co.*, 19 L. C. J. 175 (1875).

19. A bank is not liable in damages for not giving notice of the arrival of goods to a customer to whom it has endorsed the bill of lading, even when it has received such notice. The customer should ascertain by what vessel the goods are coming or notify the agents of the marks on the goods and ask that he be informed of their arrival: *Masson v. Merchants Bank*, Q. R. 14 S. C. 293 (1898).

20. A firm rented a portion of their premises to a clerk at a nominal rental and he received certain goods from them which he kept in the leased premises. A warehouse receipt given by him to the firm and which they gave to a bank as collateral was held to be valid and to give the bank the rights mentioned in this section; but no privilege is acquired by a bank on goods covered by a warehouse receipt given it as a security by an insolvent, of whose insolvency it is aware: *Banque Nationale v. Royer*, Q. R. 20 Q. B. 341 (1910).

21. The plaintiff held a bill of lading with draft on the defendant attached. The latter received the bill of lading in order to inspect the goods. The railway kept the bill and cancelled it. Defendant took the goods, but refused to accept the draft, alleging that the goods were not up to contract. Held, that the plaintiff was entitled only to the proved value of the goods and not to the amount of the draft: *Imperial Bank v. Hull*, 5 Terr. L. R. 313 (1902).

22. A bank which has acquired a bill of lading as collateral security may redeliver it to the pledgor for a limited purpose, as for example, to sell the goods and hand over to it the proceeds towards satisfaction of the debt, without thereby losing its rights: *North Western Bank v. Poynter*, [1895] A. C. 56; *Inglis v. Robertson*, [1898] A. C. 616.

87. Previous holder an agent. — If the previous holder of such warehouse receipt or bill of lading is any person—

- (a) entrusted with the possession of the goods, wares and merchandise mentioned therein, by or by the authority of the owner thereof; or,
- (b) to whom such goods, wares and merchandise are, by or by the authority of the owner thereof, consigned; or,

- (c) who, by or by the authority of the owner of such goods, wares and merchandise, is possessed of any bill of lading, receipt, order or other document covering the same, such as is used in the course of business as proof of the possession or control of goods, wares and merchandise, or as authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of such a document to transfer or receive the goods, wares and merchandise thereby represented;

the bank shall be, upon the acquisition of such warehouse receipt or bill of lading, vested with all the right and title of the owner of such goods, wares and merchandise, subject to the right of the owner to have the same transferred to him if the debt or liability, as security for which such warehouse receipt or bill of lading is held by the bank, is paid.

2. Any person shall be deemed to be the possessor of such goods, wares and merchandise, bill of lading, receipt, order or other document as aforesaid—

- (a) who is in actual possession thereof; or,
(b) for whom, or subject to whose control such goods, wares and merchandise are, or bill of lading, receipt, order, or other document is held by any other person. 53 V., c. 31, s. 73; 63-64 V., c. 26, s. 15. Am.

The present section is a consolidation by the revisors of 1906 of sub-sections 2 and 3 of section 73 of the Act

of 1890, as amended in 1900. The “previous holder,” described in clauses (a), (b) and (c) above, was called an “agent” in sub-section 2, and the effect of his transfer of the warehouse receipt or bill of lading to the bank was described in the same language as in the above section. In sub-section 3 the word “agent” was defined in the terms of clauses (a), (b) and (c) above, and the term “possessor” defined as in sub-section 2 of the present section. The recasting of the section does not appear to have affected its meaning or effect; it is simply a substitution of the statutory definition of an agent for the word “agent” itself, when he is the “previous holder” mentioned in section 86.

In the discussion of the section it will be convenient to use the term “agent” for the previous holder described in sub-section 1.

Such an agent may transfer to a bank a warehouse receipt or bill of lading under the circumstances mentioned in section 90, and the bank become vested with all the right and title of the owner as above indicated, even if the agent has no right to pledge the warehouse receipt or bill of lading and is acting fraudulently, provided, of course, the bank itself is acting in good faith.

If the agent is a warehouseman he cannot give the bank a valid warehouse receipt for the goods of his principal which he has in store.

The effect given by this section to the acts of an agent, who is a previous holder, is very similar to that given to the acts of an agent under the Factors Acts. Up to 1910 the Ontario Act was embodied in R. S. O. chap. 150, and the Quebec law in Article 1740 of the Civil Code. They were both copied from chapter 50 of the Consolidated Statutes of Canada, 1859. The Ontario Act was repealed by chapter 66 of 1910 (now R. S. O. c. 137), and the English Factors Act of 1889 substituted. Section 3 reads as follows:—“Where a mercantile agent is, with the consent of the owner, in possession of goods or

of the documents of title of goods, any sale, pledge or other disposition of the goods, made by him when acting in the ordinary course of business of a mercantile agent, shall, subject to the provisions of this Act, be as valid as if he were expressly authorized by the owner of the goods to make the same; provided that the person taking under the disposition acts in good faith, and has not at the time thereof notice that the person making the disposition has not authority to make the same." See also *R. S. Sask.*, ch. 148.

A bank may avail itself of the provisions of the provincial law in so far as they are not in conflict with the Act.

It has been held by the English Courts that bankers and others dealing with such agents or factors are protected if they are acting in good faith, notwithstanding the bad faith of the agent, or the revocation of his authority. See *Navul-Shaw v. Brownrigg*, 2 DeG. M. & G. 441 (1852); *Chunder Sein v. Ryan*, 5 L. T. N. S. 559 (1861); *Sheppard v. Union Bank*, 7 H. & N. 661 (1862); *Jewan v. Whitworth*, L. R. 2 Eq. 692 (1866); *Portalis v. Tetley*, L. R. 5 Eq 140 (1867).

They may also take a pledge from one known to be such an agent without any enquiry as to his authority: *London Joint Stock Bank v. Simmons*, [1892] A. C. 201.

The pledge of goods to a bank by a trader as collateral security, the goods being held by him under warehouse receipts duly indorsed to him, and the pledge being in the course of the bank's regular business, is a commercial matter, and the bank receiving such pledge in good faith and not knowing that the goods did not belong to the pledger, thereby acquires a valid title to the goods, and the right to dispose of them for its benefit: *Canadian Bank of Commerce v. Stevenson*, Q. R. 1 Q. B. 371 (1892). See also *Robertson v. Lajoie*, 22 L. C. J. 169 (1878).

As to goods themselves, it will be observed that in this section the agent must be a person "entrusted"

with their possession by the owner, or one to whom they have been consigned by him. As to documents of title, it is enough that he be "possessed" of them.

In the case of *Bush v. Fry*, 15 O. R. 122 (1887), the question of what was necessary to constitute an agent under R. S. O. (1897) c. 150 (now Ont. Stat. 1910, c. 50), was considered. A piano was shipped to a music teacher on the representation that he had a customer for it. If this customer did not buy he was to return it. He shipped it to another city, consigned to a name which he had assumed, where he obtained advances on it. It was held that he was not an "agent" within the meaning of the Act, and that he was not "entrusted," and there was no valid lien for the advances.

In *Heyman v. Flewker*, 13 C. B. N. S. 519 (1863), Willes, J., said: "The term 'agent' does not include a mere servant or caretaker, or one who has possession of goods for carriage, safe custody, or otherwise, as an independent contracting party; but only persons whose employment corresponds to that of some known kind of commercial agent like that class (Factors) from which the Act has taken its name." In *Cole v. North Western Bank*, L. R. 10 C. P. 354 (1875), it was held that a warehouseman with whom goods were deposited, was not an "agent" or "entrusted with the possession of goods" within the Factors Act, although he used also frequently to sell such goods. In *Johnson v. Credit Lyonnais*, 3 C. P. D. 32 (1877), a vendor who retained the documents of title, and fraudulently obtained advances on them, was held not to be the agent of the vendee.

In *City Bank v. Barrow*, 5 App. Cas. 664 (1880), Art. 1740 of the Quebec Civil Code above cited, was considered. An English merchant sent hides to a Montreal tanner to be tanned. He pledged the hides to the Bank of Toronto. It was held that he was not a factor or agent entitled to do so, and that the bank had no lien as against the owner. In this case Lord Blackburn cited

approvingly the case of *Cole v. North Western Bank*, *supra*, as establishing “that an agent who can pledge or sell must be an agent of that class which, like factors, have a business which, when carried to its legitimate result, would properly end in selling or in receiving payment for goods. That would be a kind of class; factors and agents, in the class of factors. If such a person is ‘entrusted,’ and is entrusted in that capacity, then, in the absence of bad faith on the part of the pledgee, the pledge is good.”

In this case it was held by the Privy Council that Articles 1488, 1489 and 2268 of the Civil Code, which make valid a sale if it be a commercial matter, or if the article be bought in good faith in a fair or market or at a public sale, or from a trader dealing in similar articles, even though the article had been stolen, did not apply to a case of pledge. The Quebec Statute, 42-43 V. c. 19, was subsequently passed declaring that they should also apply to a contract of pledge.

If the agent has validly pledged the goods for a portion of their value, they are held by the pledgee for him within the meaning of the last clause of the section, so that he may pledge them for further advances: *Portalis v. Tetley*, L. R. 5 Eq. 140 (1867).

The provisions of this section are not incorporated in section 88 by what is now sub-section 7 of section 88: *Barry v. Bank of Ottawa*, 17 O. L. R. 83 (1908).

88. Loans to wholesale men and farmers.—The bank may lend money to any wholesale purchaser or shipper of or dealer in products of agriculture, the forest, quarry and mine, or the sea, lakes and rivers, or to any wholesale purchaser or shipper of or dealer in live stock or dead stock or the products thereof, upon the security of such products, or of such live stock or dead stock or the products thereof.

2. The bank may lend money to a farmer upon the security of his threshed grain grown upon the farm.
3. The bank may lend money to any person engaged in business as a wholesale manufacturer of any goods, wares and merchandise, upon the security of the goods, wares and merchandise manufactured by him, or procured for such manufacture. 53 V., c. 31, s. 74; 63-64 V., c. 26, s. 17. Am.

This section is a much greater innovation on provincial law than the preceding sections relating to warehouse receipts and bills of lading. In those provinces which recognize change of ownership or of legal relation respecting personal property without change of possession, or change of possession without change of ownership or legal relation, Acts relating to bills of sale, to chattel mortgages, and to conditional sales and the like, have been passed requiring as a rule some form of registration of the transaction or other form of publicity. In the Province of Quebec chattel mortgages are not recognized, and as a rule the apparent ownership of personal or movable property corresponds with the real ownership.

It is also a derogation from the prohibition in section 76 of the bank lending money upon the security of goods, wares and merchandise.

Prior to 1890 there had been embodied in the Bank Acts from time to time provisions allowing certain classes of persons to give to banks, either by endorsement or directly, warehouse receipts for goods that were their own property. A change was made by the Act of 1890 in giving a definition of a warehouse receipt which made it a condition that the goods should not be the property of the person giving the receipt. That Act, however, by

section 74, introduced a new instrument called a "security," by which the classes of persons named in the section could assign to a bank the kinds of property therein enumerated, and the bank thereby acquire most of the rights and privileges previously secured by warehouse receipts, besides some additional ones. In 1900 the section was amended by adding the words "dealer" and "quarry" in what is now sub-section 1, and was then sub-section 2. Sub-section 3 of the present Act was originally sub-section 1. Sub-section 2 is new.

It is only in favor of a bank that such a security can be given. It cannot be assigned to a third party. Ordinarily a surety who pays a debt is entitled to the securities held by the creditor, but with respect to this security when the debt is paid the security is extinguished: *Re Victor Varnish Co., Clare's Claim*, 16 O. L. R. 338 (1907). If, however, another bank purchased the assets of the bank which held the security, or became otherwise entitled to the security, an assignment to it might be upheld, as it would not be against the policy of the Act.

Wholesale purchaser, shipper or dealer.—The word wholesale is not defined in the Act. In *Treacher v. Treacher*, W. N. 1874, p. 4, Bacon, V.C., said: "As a general rule, wholesale merchants dealt only with persons who bought to sell again, whilst retail merchants dealt with consumers." In *Townsend v. Northern Crown Bank*, 28 O. L. R. 521 (1913), it is said that in Canada "the lines between wholesale and retail have been very loosely drawn and have not been at all rigid." A village lumber dealer who bought by the car-load, and carried a stock of two or three hundred thousand feet, selling to farmers, builders and contractors, was in that case held to be a "wholesale purchaser" within the meaning of this section. In the Imperial dictionary, wholesale as an adjective is defined as "buying and selling by the piece or quantity." Another says, "wholesale prima facie means a sale by a merchant to a retailer." In the United States a number of definitions have been given in the

Courts and dictionaries not differing materially from those above quoted. It will probably be held to be a question to be decided upon the facts and circumstances of each particular case.

A rancher, whose business is raising cattle, no matter how large it is, is not a "wholesale purchaser or shipper of or dealer in live stock," but rather a cattle breeder or cattle grower: *Hatfield v. Imperial Bank*, 6 Terr. L. R. 296 (1907). The committee on the late bill reported in favor of including ranchers, but it was struck out in the House of Commons.

Products of agriculture, etc.—Products of agriculture are defined in sec. 2 (*l*); products of the forest in sec. 2 (*m*); and products of the sea, lakes and rivers in sec. 2 (*n*). In *Molsons Bank v. Beaudry*, Q. R. 11 K. B. 212 (1901), it was held by a majority of the Court of Appeal of Quebec that sawn lumber was not a product of the forest. In Ontario the contrary was held in appeal in *Townsend v. Northern Crown Bank*, *supra*. The latter case has been taken to the Supreme Court. There will be no dispute hereafter, as Parliament adopted the Ontario view in its definition in sec. 2 (*m*).

Farmers.—In sub-section 2 "farmer includes the owner, occupier, landlord and tenant of a farm:" sec. 2 (*f*); and "grain means wheat, oats, barley, rye and flax:" sec. 2 (*h*). The farmer can only give as security the threshed grain grown upon his own farm. Grain, in the definition of the products of agriculture, sec. 2 (*l*), has no doubt a wider meaning, and would include Indian corn, buckwheat and other cereals.

Wholesale manufacturers.—Manufacturer has a wider meaning in the Act than in ordinary popular language, and "includes manufacturers of logs, timber or lumber, maltsters, distillers, brewers, refiners and producers of petroleum, tanners, curers, packers, canners of meat, pork, fish, fruit or vegetables, and any person who produces by hand, art, process or mechanical means any

goods, wares or merchandise:" sec. 2 (i). Wholesale manufacturer is not defined, but would probably be held to be one who manufactured on a large scale, and sold in large quantities, and generally to merchants. A manufacturer can only give security under this section upon goods actually manufactured by him or procured by him to be used as material in such manufacture.

4. Substitution of products, goods, etc.—If, with the consent of the bank, the products, goods, wares and merchandise, live stock or dead stock or the products thereof, upon the security of which money has been loaned under the authority of this section, are removed and other products, goods, wares and merchandise, live stock or dead stock or the products thereof of substantially the same character are respectively substituted therefor, then to the extent of the value of the products, goods, wares and merchandise, or live stock or dead stock or the products thereof so removed, the products, goods, wares and merchandise, live stock or dead stock or the products thereof so substituted shall be covered by such security as if originally covered thereby; but failure to obtain the consent of the bank to any such substitution shall not affect the validity of the security either as respects any products, goods, wares and merchandise, or live stock or dead stock or the products thereof actually substituted as aforesaid or in any other particular. R. S. C. c. 29, s. 88, s.-s. 2. Am.

This sub-section has been recast. In the Act of 1906 it was sub-section 2, and by its terms applied only to sub-section 1, and the products of agriculture, etc. therein

named. It did not then apply to the goods of a manufacturer. Neither in the former Act nor in the present is it made applicable to goods covered by a warehouse receipt.

The substitution provided for in this sub-section is authorized only when the bank consents. If made without such consent the bank may either adopt it or enforce its claim upon the original goods if it so prefers, or enforce any remedy it may have against the owner. The bank cannot by any such substitution increase the value of its security.

5. Security by owner. — Any such security, as mentioned in the foregoing provisions of this section, may be given by the owner of the said products, goods, wares and merchandise, stock or products thereof, or grain.

6. The security may be taken in the form set forth in Schedule C to this Act, or to the like effect.

It is the owner only who can give the security mentioned in this section: *Hatfield v. Imperial Bank*, 6 Terr. L. R. 296 (1907); *Barry v. Bank of Ottawa*, 17 O. L. R. 83 (1908). He must sign the instrument (Schedule C) himself or it must be executed for him by his duly authorized agent or attorney. A firm may act by one of the partners or an agent duly authorized, and a company by a duly authorized officer or agent.

Close adherence to the form given in Schedule C is not essential, provided the document is "to the like effect." These words probably do not change the law, but they emphasize what is the general rule under section 31 (*d*) of the Interpretation Act, R. S. C. c. 1, which says: "whenever forms are prescribed, slight deviations therefrom, not affecting the substance or calculated to mislead, shall not invalidate them."

A substantial compliance with the section is sufficient. Where a form is given as here, and it is contemplated that it will be filled up by business men using popular and not legal or technical language, such commercial documents will not be scrutinized with the same particularity as those expected to be prepared or examined by solicitors and executed only after having been carefully settled: *Imperial Paper Mills v. Quebec Bank*, 26 O. L. R. (1912), p. 654, affirmed by the Privy Council, August 7th, 1913: 24 O. W. R. 930.

A general description such as all the articles of a particular kind, or all those bearing a certain mark to be found in a certain place would, as a rule, be a sufficient description. The Court would look to see whether there was property that could reasonably come within the description. "Mere difficulty in ascertaining all the things which are included in a general assignment, whether in esse or in posse, will not affect the assignee's right to those things which are capable of ascertainment or are identified. Lord Eldon said in *Lewis v. Madocks*, 8 Ves. 156, 'If the Courts find a solid subject of personal property, they would attach it rather than render the contract nugatory:'" *Tailby v. The Official Receiver*, 13 A. C. at p. 533 (1888).

It will be observed that in describing the property assigned as security, Schedule C has been very much changed. Formerly it read "the goods, wares and merchandise mentioned below." For these words are now substituted the following: "the products of agriculture, the forest, quarry and mine [*or, the sea, lakes and rivers, or, the live stock or dead stock, or the products thereof, or, the goods, wares and merchandise, or, the grain, (as the case may be)*];" and these words are repeated below in describing the ownership and possession, etc. The definition of goods, wares and merchandise in section 2 (*g*) would probably be wide enough to cover all the articles named in this section, and the extended enumeration in the form was likely intended to secure greater

particularity in the description. It will be prudent not to rely upon the general words "goods, wares and merchandise" but to specify the particular classes of such property. In giving at the end of the instrument the "description of property assigned," it should be precise, definite, accurate and such as would most readily identify the property.

7. Rights acquired by security.—The bank shall, by virtue of such security, acquire the same rights and powers in respect of the products, goods, wares and merchandise, stock or products thereof, or grain covered thereby as if it had acquired the same by virtue of a warehouse receipt; provided, however, that the wages, salaries or other remuneration of persons employed by any wholesale purchaser, shipper or dealer, by any wholesale manufacturer, or by any farmer in connection with any of the several wholesale businesses referred to, or in connection with the farm, owing in respect of a period not exceeding three months, shall be a charge upon the property covered by the said security in priority to the claim of the bank thereunder, and such wages, salaries or other remuneration shall be paid by the bank if the bank takes possession or in any way disposes of the said security or of the products, goods, wares and merchandise, stock or products thereof, or grain covered thereby. 53 V., c. 31, s. 74; 63-64 V., c. 26, s. 17. Am.

The proviso as to wages was added to the sub-section at the late session.

With regard to the rights of the bank under a security given under this section by a wholesale manufacturer to a bank which allowed him to carry on his business as before, it was held by the Court of Appeal that the defendants who had purchased goods from him in the ordinary course of business without notice that he had given such security became the property of the purchaser free from any claim of the bank: *Bank of Montreal v. Tudhope*, 21 Man. R. 380 (1911). *National Mercantile Bank v. Hampson*, 5 Q. B. D. 177 (1880), followed.

89. Goods manufactured from articles pledged.—

If goods, wares and merchandise are manufactured or produced from the goods, wares and merchandise, or any of them, included in or covered by any warehouse receipt, or included in or covered by any security given under the last preceding section, while so covered, the bank holding such warehouse receipt or security shall hold or continue to hold such goods, wares and merchandise, during the process and after the completion of such manufacture or production, with the same right and title, and for the same purposes and upon the same conditions, as it held or could have held the original goods, wares and merchandise.

In the Bank Act, R. S. C. (1886), chap. 120, the principle of this sub-section applied only to cereal grains manufactured into flour or malt, or hogs manufactured into pork, bacon or hams. In 1890 it was made applicable to all manufactured articles. Where other goods than those covered by the warehouse receipt or security enter into the composition of the manufactured articles nice questions may arise. If these other goods belong to the manufacturer there probably would be no difficulty, as

that might be considered to be in the contemplation of the parties, and the blame, if any, would be on the manufacturer himself.

If, however, he should combine material covered by two or more warehouse receipts or assignments under section 88, the difficulty would be greater. In that case the question would be settled by the provincial law, as the Act is silent on the point. In Quebec the Civil Code lays down a series of rules in Articles 429 to 442; the principle being that the product might be divided according to the respective interests of the parties, or if not divisible, the party having the greatest interest might claim the whole on paying the others what they are entitled to.

In *Re Goodfallow*, 19 O. R. 299 (1890), a miller gave a bank a warehouse receipt for a certain quantity of "wheat and its product." It was held that once the wheat in the mill was reduced to a quantity equal to or less than the amount in the receipt, the whole of it belonged to the bank, and so long as "the product" could be traced, whether in flour or in money, it was recoverable by the bank as against the administrator of the miller.

Where corn had been transferred to a bank by a miller as security for advances under section 74 of the Act of 1890, to be ground and sold and the proceeds given to the bank, such proceeds may be recovered by the bank from another creditor of the miller to whom they had been assigned and who had a knowledge of the facts at the time: *Union Bank v. Spinney*, 38 S. C. Can. 187 (1906).

The principle laid down in this section had been adopted by the Courts before it had been incorporated in the statute. See *Wilmot v. Maitland*, 3 Grant, 107 (1851); *Mason v. G. W. Ry. Co.*, 31 U. C. Q. B. 73 (1871).

2. Preference over unpaid vendor.—All advances made on the security of any bill of lading or

warehouse receipt, or of any security given under the last preceding section, shall give to the bank making the advances a claim for the repayment of the advances on the products or stock, goods, wares and merchandise therein mentioned, or into which they have been converted, prior to and by preference over the claim of any unpaid vendor: Provided that such preference shall not be given over the claim of any unpaid vendor who had a lien upon the products or stock, goods, wares and merchandise at the time of the acquisition by the bank of such warehouse receipt, bill of lading, or security, unless the same was acquired without knowledge on the part of the bank of such lien.

The preceding sub-section gives a bank a right to hold goods even when their form is changed. The present one gives it priority for its claim over the unpaid vendor, who, under the law of Quebec, ranks above the pledgee. By Article 1994 of the Civil Code privileged claims upon movable property rank in the following order: "1. Law costs and all expenses incurred in the interest of the mass of the creditors. 2. Tithes. 3. The claim of the vendor. 4. The claims of creditors who have a right of pledge or of retention."

Article 1994c provides that the claim of a workman for cutting, drawing or rafting logs or timber shall not affect the rights of a bank under the Banking Act.

Article 1998: "The unpaid vendor of a thing has two privileged rights: 1. A right to revendicate it. 2. A right of preference upon its price. In the case of insolvent traders these rights must be exercised within fifteen days after the delivery."

Article 1999: "The right to revendicate is subject to four conditions: 1. The sale must not have been made on credit. 2. The thing must still be entire and in the same condition. 3. The thing must not have passed into the hands of a third party who has paid for it. 4. It must be exercised within eight days after the delivery, saving the provisions concerning insolvent traders contained in the last preceding article."

Article 2000: "If the thing be sold pending the proceedings in revendication, or if, when the thing is seized at the suit of a third party, the vendor be within the delay and the thing in the condition prescribed for revendication, the vendor has a privilege upon the proceeds in preference to all other privileged creditors hereinafter mentioned. If the thing be still in the same condition, but the vendor be no longer within the delay, or have given credit, he has a like privilege upon the proceeds, except as regards the lessor or the pledgee."

The effect of the sub-section is that if the bank has notice of the claim of the unpaid vendor it will rank after him; if it had not such notice at the time it acquired its lien it will have priority over him. The rule laid down in the case of *Tennant v. The Union Bank*, [1894] A. C. 31, would uphold the constitutionality of this provision, which overrides the civil law of the province.

3. Sale of pledged goods for debt.—In the event of the non-payment at maturity of any debt or liability secured by a warehouse receipt or bill of lading, or secured by any security given under the last preceding section, the bank may sell the products or stock, goods, wares and merchandise or grain, mentioned therein, or so much thereof as will suffice to pay such debt or liability with interest and expenses, returning the surplus, if any, to the person from whom the warehouse receipt, bill of lading, or

security, or the products or stock, goods, wares and merchandise or grain mentioned therein, as the case may be, were acquired: Provided that such power of sale shall be exercised subject to the following provisions namely:—

- (a) No sale, without the consent in writing of the owner of any products of the forest, shall be made under this Act until notice of the time and place of such sale has been given by a registered letter, mailed in the post office, post paid, to the last known address of the pledgor thereof, at least thirty days prior to the sale thereof;
- (b) No such products or stock, other than products of the forest, and no goods, wares and merchandise, and no grain, shall be sold by the bank under this Act without the consent of the owner, until notice of the time and place of sale has been given by a registered letter, mailed in the post office, post paid, to the last known address of the pledgor thereof, at least ten days prior to the sale thereof;
- (c) Every sale, under such power of sale, without the consent of the owner, shall be made by public auction, after notice thereof by advertisement, in at least two newspapers published in or nearest to the place where the sale is to be made, stating the time and place thereof; and, if the sale is in the province of Quebec, then at least one of such newspapers shall be a newspaper published in the English language, and one other such newspaper

shall be a newspaper published in the French language. 53 V., c. 31, ss. 76, 77 and 78; 63-64 V., c. 26, s. 19. Am.

This sub-section provides for the sale of the pledged goods by the bank when the debt or liability is not met at maturity.

It is a well settled rule of the English common law that a pledgee, upon default, may sell at public auction goods or chattels that are pledged without judicial process or decree of foreclosure, upon giving the debtor reasonable notice to redeem: *Tucker v. Wilson*, 1 Peere Williams, 261 (1714); *Lockwood v. Ewer*, 9 Modern, 275 (1742); *Kemp v. Westbrook*, 1 Vesey, Sr., 278 (1749); *Pigot v. Cubley*, 15 Common Bench (N.S.), 701 (1864); *Deverges v. Sandeman*, [1902] 1 Ch. 579.

In the Province of Quebec under the civil law the pledgee has no such right. His remedy is to get judgment against the debtor, seize and sell the goods pledged, and obtain payment by preference out of the proceeds: Civil Code, Art. 1971.

The effect of this sub-section is to make the law of England for the sale of such pledged goods applicable to the whole Dominion.

The provisions of this sub-section as to the method of sale of pledged goods are those that are to govern in the absence of consent by the owner to a sale otherwise. With such consent any or all of the provisions may be dispensed with, and banks as a rule obtain such consent when the goods are pledged. It is to be noticed that in the case of timber or lumber the notice by registered letter can only be waived by a consent in writing, while as to other goods a written consent is not necessary. For both of these classes of goods the waiver of the sale by public auction and of the advertisement in two newspapers the consent need not be in writing.

The two clauses as to notice by registered letter are negative and prohibitory. If a sale were made without such notice, it would appear to be null, at least in the province of Quebec, where the rule of the civil law prevails that "prohibitive laws import nullity, although such nullity be not therein expressed": C. C. Art. 14. In such a case the bank might be liable in damages for its illegal act, besides being subject to the penalty of \$500 under section 142. The notice of thirty days in clause (a) and of ten days in clause (b) is in each case clear days, that is, neither the day of mailing nor the day of sale is counted.

It will be noticed that clause (c) is affirmative in form and not negative, so that the foregoing remarks would not apply to it. The selling by auction would probably be held to be essential, as neither the statute nor the common law would authorize a sale in any other way. The want of notice in the newspapers might not be fatal if reasonable notice were given otherwise, unless the prohibition in section 76 would have that effect. By that section the bank is prohibited, except as authorized by the Act, from dealing in the buying or selling or bartering of goods or from engaging in any trade or business whatsoever, or from lending money or making advances upon the security of any goods, wares or merchandise. This would no doubt prevent the bank from lending upon warehouse receipts that might comply with the provincial law and upon which a private individual or another corporation might acquire a good security. It would probably also be held to prevent a bank from realizing on its security, in a manner authorized by the provincial law and thus open to other lenders of money.

Where a bank sells goods which had been pledged to it, covered by a bill of lading, it may become liable to the purchaser upon an implied warranty of title: *Peuchen v. Imperial Bank*, 20 O. R. 325 (1890). See also *Confederation Life v. Labatt*, 27 Ont. A. R. 321 (1900).

90. Conditions of security.—The bank shall not acquire or hold any warehouse receipt or bill of lading, or any such security as aforesaid, to secure the payment of any bill, note, debt, or liability, unless such bill, note, debt or liability is negotiated or contracted,—

- (a) at the time of the acquisition thereof by the bank; or,
- (b) upon the written promise or agreement that such warehouse receipt or bill of lading or security would be given to the bank:

Provided that such bill, note, debt, or liability may be renewed, or the time for the payment thereof extended, without affecting any such security.

A warehouse receipt or bill of lading, or a security under section 88, can only be taken as collateral security by a bank (1) if the bill or note is negotiated at the time the bank acquires the security, or (2) if the debt or liability is contracted at the time of such acquisition, or (3) if at the time the bill or note is negotiated or the debt or liability contracted there is a written promise or agreement that such warehouse receipt or bill of lading or security shall be given.

There are several grounds for a somewhat strict interpretation of the present section, and others of a like nature. The general rule is laid down in section 76, viz., that a bank shall not, except as authorized by the Act, either directly or indirectly lend money on the security of any goods, wares or merchandise. Sections 86 and 88, which are among the exceptions to 76, are controlled by the present section, which is prohibitory in declaring that a bank shall not acquire or hold any of

the documents of title named, except on the terms indicated.

By section 60 of the Bills of Exchange Act "a bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill." "Holder" in that Act is defined as the payee or endorsee of a bill or note, who is in possession of it, or the bearer thereof. He need not be the owner, he may have it merely for discount, collection or the like; so that the negotiation of a bill or note is not necessarily a sale of the instrument, but may be a pledging or a mere transfer of possession, provided the transferee is in a position thereby to acquire the status of a holder as above defined. The word "negotiated" would appear to be used in a narrower sense in this section. Its being joined with the words "debt or liability contracted" would seem to restrict it to the purchase or discount of the bill or note by the bank, and not to include the renewal, which is treated as something distinct, in the concluding part of the section. See *Jonmenjoy Coondoo v. Watson*, 9 App. Cas. 561 (1884).

In the *Bank of Hamilton v. Shepherd*, 21 Ont. A. R. 156 (1894), a warehouse receipt was taken by the bank on the renewal of a note, no actual advance being then made. It was held that this was not a negotiation, and the bank was not entitled to hold the security.

The fact that when the renewal note and the warehouse receipt were taken by the bank, another warehouse receipt, which had been taken when the debt was contracted, was surrendered, was held not to be a negotiation or sufficient to bring the transaction within the provisions of this section. In *Bank of Hamilton v. Noye*, 9 O. R. 631 (1885), it had been considered that the surrender of the antecedent lien and the taking of a new one with the renewal, might be treated as a negotiation within the meaning of the definition given in *Foster v. Bowes*, 2 P. R. 256 (1857).

In the *Bank of Hamilton v. Halstead*, 28 S. C. Can. 235 (1897), where notes were discounted and the proceeds placed to the credit of the customer when the assignments were given, but the moneys were really under the control of the bank, it was held that the notes were not "negotiated" within the meaning of this section, nor was there any "debt" contracted at the time, and that the securities were consequently void as against the assignee for creditors.

In the *Dominion Bank v. Oliver*, 17 O. R. 402 (1889), it was pointed out by Boyd, C., that in the corresponding clause of the former Act the negotiation of a note is put in contrast with its renewal; and that the mere renewal cannot be read as meaning negotiation. See to the same effect *Bank of British North America v. Clarkson*, 19 U. C. C. P. 182 (1869).

Where a warehouse receipt was indorsed to the acceptor of an accommodation bill by way of security for his acceptance, it was held that there was no debt contracted at the time so as to give the acceptor a valid claim to the property mentioned in the warehouse receipt: *Cockburn v. Sylvester*, 1 Ont. A. R. 471 (1877).

When warehouse receipts were transferred to a bank by indorsement and instrument of hypothecation contemporaneously with the discount of a promissory note made by the holders of the receipts and the placing of the proceeds of the discount to the credit of such holders, the transaction was upheld although the account was generally overdrawn when such transactions took place, such proceeds being placed freely at the disposal of the customers: *Ontario Bank v. O'Reilly*, 12 O. L. R. 420 (1906); *Toronto Cream & B. Co. v. Crown Bank*, 16 O. L. R. 400 (1908); *Canadian Bank of Commerce v. Wilson*, 9 W. L. R. 359 (1908).

A warehouse receipt may be transferred by indorsement as collateral security for a debt contracted at the time. The obligation contracted at the time may be made

to cover future advances, but not past indebtedness: *Robertson v. Lajoie*, 22 L. C. J. 169 (1878).

Where a debtor pledged warehouse receipts as collateral security for drafts, and agreed that if the proceeds of the goods were more than sufficient to pay these drafts the surplus should go to pay an old indebtedness, the agreement was held void as to the latter: *Perkins v. Ross*, 6 Q. L. R. 65 (1880).

Where a lumber company gave to a bank documents pledging logs in a river as security for previous advances, the bank acquired no lien on the logs: *Ross v. Molsons Bank*, 2 Dorion, 82 (1881).

Where a bank took a security which was claimed to be irregular, but the customer in compromise of a suit agreed that the bank should sell the goods and apply the proceeds to his indebtedness, the bank was entitled to hold them as against the sheriff who subsequently levied on them under an execution against the customer: *Armstrong v. Buchanan*, 35 N. S. R. 559 (1903).

Written promise or agreement.—The Bank Act of 1871 provided that the bill of lading or receipt should be transferred only when the bill or note was negotiated or the debt contracted, unless at that time there was an “understanding” that they should be given subsequently. In the Bank Act, R. S. C. (1886), chap. 120, the word used is “promise”; in the Act of 1890 the words “written promise or agreement” were substituted. Although these words have been so long used in this connection it is surprising how seldom they have come up for judicial interpretation.

In the *Royal Canadian Bank v. Ross*, 40 U. C. Q. B. 466 (1877), the bank made advances to be secured by bills of lading and warehouse receipts for coal and stone when received. The goods came from time to time, and bills of lading and warehouse receipts were given to the bank. The transactions were sustained, and it was held

to be no objection that the agreement was to give bills and receipts for goods, of which, at the time, the customer was not possessed. See to the same effect, *McCrae v. Molsons Bank*, 25 Grant, 519 (1878); and *Re Central Bank, Canada Shipping Co.'s Case*, 21 O. R. 515 (1891). In *Suter v. Merchants' Bank*, 24 Grant, 365 (1877), a manufacturer, when getting advances from the bank, proposed that he should warehouse his goods as manufactured and pledge the receipts with the bank. This was agreed to, and such receipts given from time to time. It was held that it was no objection that the goods and receipt were not in existence at the time of the agreement. It was contended by plaintiff that the alleged agreement was not valid as it did not specify the number of cases or their value. This was held not to be too vague or uncertain to entitle the bank to hold the receipts. In *Tennant v. Union Bank*, 19 Ont. A. R. 1 (1892), the bank made advances to mill owners for getting out logs, on a promise that warehouse receipts would be given to the bank on the lumber to be manufactured from them. These were given from time to time as the lumber was manufactured and piled in the yard of the mill owners. The bank was held entitled to the lumber covered by these receipts.

A somewhat analogous case is that where a chattel mortgage has been given in accordance with the previous promise or agreement, and it is sought to set it aside as a fraudulent preference. Instances of preferences being sustained on the ground of a previous promise or agreement will be found in *Ex parte Hodgkin*, L. R. 20 Eq. 746 (1875); *Allan v. Clarkson*, 17 Grant, 570 (1870); *McRoberts v. Steinoff*, 11 O. R. 369 (1886); *Clarkson v. Sterling*, 15 Ont. A. R. 234 (1888); *Embury v. West*, *ibid.* 357 (1888); *Lawson v. McGeoch*, 20 Ont. A. R. 464 (1893).

In scarcely any of the cases on the subject do the precise terms of the agreement come in question. In most of them all that appears is that there was an agreement

to give security. Once this was clearly proved it seems to have been considered, as a rule, that the conditions were met. In *Lawson v. McGeoch*, *supra*, at page 475, Maclellan, J., says: "It is said that the agreement was too vague and uncertain to be attended to as it is not shown that any particular goods were mentioned, which were to be mortgaged. I am not pressed with this objection. The debtor was a farmer, and the mortgage was to be a chattel mortgage. I think that means a mortgage of the debtor's chattels and that the defendant could have selected a sufficient quantity of the debtor's goods, and have required a mortgage upon them."

It is probable that, in accordance with the favour shewn to commercial and banking transactions, a promise or agreement to give one of the securities mentioned in this section would be more liberally construed than one to give a chattel mortgage. In drawing up such an agreement care should be taken that it is made wide enough. The promise may include more than the receipt or the security, but the latter cannot cover more than the promise. The property need not be in the possession of the customer, or even in existence, when the customer obtains the advance, but it must be in contemplation that he is to acquire it. The promise may be to give the securities from time to time. An agreement to give a bill of lading, warehouse receipt or security for a certain class of goods up to a certain quantity, or up to a certain value, would probably be a sufficient compliance with the law.

In this way by an agreement with a wholesale manufacturer, or purchaser or shipper, mentioned in section 88, a bank might, when making advances, provide that securities should be given it from time to time as the goods are manufactured or purchased, and thus keep its claim secured, while allowing the business to be carried on.

Renewal.—A bill or note may be renewed or the time extended without affecting any such security. If taken

as security for more than one bill or note it would not be necessary that they should be kept distinct in taking renewals, provided the new bills or notes did not in the aggregate amount to more than the old with the interest added, and provided no additional debt were included in any of the new paper: *Barber v. Mackrell*, W. N. 1892, p. 133; *Townsend v. Northern Crown Bank*, 26 O. L. R. 291 (1912).

2. Exchange of securities.—The bank may—

(a) on the shipment of any products or stock, goods, wares and merchandise, or grain, for which it holds a warehouse receipt, or any such security as aforesaid, surrender such receipt or security and receive a bill of lading in exchange therefor; or,

(b) on the receipt of any products or stock, goods, wares and merchandise, or grain, for which it holds a bill of lading, or any such security as aforesaid, surrender such bill of lading or security, store the products or stock, goods, wares and merchandise, or grain, and take a warehouse receipt therefor, or ship the products or stock, goods, wares and merchandise, or grain, or part of them, and take another bill of lading therefor. V., c. 31, s. 75; 63-64 V., c. 26, s. 18.

This sub-section provides for the conversion of one of these classes of securities into another when the bank ships goods which it holds under a warehouse receipt or security, or when it receives goods for which it holds a bill of lading or such security.

A purchaser of hops had given a bank securities under section 74 on the hops. At the request of the bank he constituted his bookkeeper his warehouseman, and

the latter issued warehouse receipts to the bank in substitution for these securities, there being no new advance. It was held that this exchange was valid under this sub-section: *Conn v. Smith*, 28 O. R. 629 (1897).

Section 143 provides for imprisonment for a term not exceeding two years for wilfully making a false statement in any one of the documents named in this section; and section 144 provides the same punishment for any person who has control of the goods covered by any such document wrongfully alienating or parting with the goods or withholding the same from the bank.

- 91. Rate of interest or discount.**—The bank may stipulate for, take, reserve or exact any rate of interest or discount not exceeding seven per cent per annum and may receive and take in advance any such rate, but no higher rate of interest shall be recoverable by the bank.
2. The bank shall make a quarterly return to the Minister, as of the last juridical day of the months of March, June, September and December in each year, giving such particulars as may be prescribed by regulations made by the Treasury Board of the interest and discount rates charged by the bank.
 3. Such returns shall be made up and sent in within the first thirty days after the respective juridical days aforesaid, and shall be signed by the same persons as are required to sign the monthly returns made to the Minister under section 112 of this Act. 53 V., c. 31, s. 80. Am.

Sub-section 1 first appeared in its present form in the Bank Act, R. S. C. 1906, as section 91. Prior to that time

it was part of section 80 of the Bank Act of 1890, being preceded by the words "The bank shall not be liable to incur any penalty or forfeiture for usury." The repeal of all remaining enactments against usury by 53 Vict. chap. 34, sec. 2, made obsolete and unnecessary this provision which had been embodied in the Bank Act of 1867, having been taken from C. S. C. chap. 58, sec. 4.

The Act being silent as to what would be the effect of a promise to pay more than the authorized rate of seven per cent, or whether a customer who had paid more than seven per cent could recover back any part of the money so paid, the result was that inconsistent and conflicting judgments were rendered in the various provincial Courts. By some it was held that while the section prevented a bank from recovering more than seven per cent, it was entitled, on a promise to pay more than seven per cent, to recover up to that amount; by others that a promise to pay more than seven per cent did not entitle a bank to recover more than the legal rate fixed by statute, viz., 6 per cent prior to the 7th of July, 1900, or 5 per cent subsequent to that date. Again it was held in some cases that where more than seven per cent had been voluntarily paid to a bank the excess could be recovered back, while most of the later decisions denied such a right.

These questions were finally settled by the decision of the Privy Council in *McHugh v. Union Bank*, [1913] A. C. 299, where it was held that a stipulation for interest at the rate of eight per cent was inoperative, and therefore as no rate had been fixed by agreement only the legal rate of five per cent was recoverable. It was also held that no action lay to recover back the excess which had been paid voluntarily.

It would be equally contrary to the last clause of the sub-section if the bank should attempt to retain money of the customer for its claim or to put forth such a claim by way of set-off. Nothing short of a voluntary payment by the customer, or its equivalent, would be sufficient to entitle it to retain such excess.

Would a promise to pay interest at the rate of seven per cent compounded be binding? In the case of *Montgomery v. Ryan*, 16 O. L. R. at p. 102, a claim for compound interest at seven per cent was disallowed on the facts of that case.

A bank may make the charges for collection of discounted paper, mentioned in sections 93 and 94, in addition to the interest allowed by this section.

Sub-sections 2 and 3 were added at the late revision as the result of a discussion in the House of Commons concerning the rates in excess of seven per cent said to be charged in some parts of the country.

92. Interest allowed depositors.—The bank may allow any rate of interest whatever upon money deposited with it.

2. The liability of the bank, under any law, custom or agreement to repay moneys heretofore or hereafter deposited with it and interest, if any, shall continue, notwithstanding any statute of limitations, or any enactment or law relating to prescription. 53 V., c. 31, s. 80; R. S., c. 29, s. 126.

The first sub-section was the whole of section 92 since the revision of 1906; it had previously been the concluding clause of section 80 of the Act of 1890.

It has been held that interest on a deposit is only payable by statute or by contract: *In re Gosman*, 17 Ch. D. 772 (1881), or by a course of dealing between the parties: *In re Duncan & Co.*, [1905] 1 Ch. 307. As a rule interest is not allowed by Canadian banks on current accounts, where the money is payable on demand. These form item 4 of the liabilities in Schedule D. The other deposits by the public are those in the savings bank departments which are usually made payable after certain

notice which is not exacted for small amounts, three per cent interest being allowed on the minimum monthly balance; and those payable at a fixed date for which deposit receipts are given, and for which three per cent is usually allowed. These two latter classes together form item 5 of liabilities in Schedule D.

Although the Dominion has been given exclusive jurisdiction over the subject of interest by section 91 (19) of the B. N. A. Act, there has been no legislation by the Dominion except R. S. C. chap. 122; and the old varying provincial legislation and jurisprudence as to when interest is payable are still in force in the several provinces.

The second sub-section was taken in the late revision from section 126 and put in its present place. It will be observed that it is only with regard to deposits and interest thereon that a bank is, by this section, prevented from setting up the Statute of Limitations or prescription. The relation between a bank and its depositors being that of debtor and creditor, the claim of a depositor for both principal and interest would, if there were no such provision, be extinct in the province of Quebec in five years, and in the other provinces in six years. With regard to other debts or claims against it, a bank is in the same position as other debtors, save as to dividends: sec. 57 s.-s. 5. See 27 O. L. R. 441.

93. Collection charges.—When any note, bill, or other negotiable security or paper, payable at any of the bank's places or seats of business, branches, agencies or offices of discount and deposit in Canada, is discounted at any other of the bank's places or seats of business, branches, agencies or offices of discount and deposit, the bank may, in order to defray the expenses attending the collection thereof, receive or retain in addition to the discount thereon, a percentage calculated upon the

amount of such note, bill, or other negotiable security or paper, not exceeding one-eighth of one per cent; provided that the bank may make a minimum charge of fifteen cents. 53 V., c. 31, s. 82.

The charges in this section relate only to bills, notes, etc., which have been discounted by the bank, and not to those received for collection. Since 1867 the rate varied from one-eighth to one-half per cent, according to the time the paper had to run. The above uniform rate and minimum of fifteen cents were introduced at the late revision. No rate is prescribed for paper payable at an office of the bank outside of Canada.

A bank is not allowed to make a charge for cashing a Government cheque: sec. 98.

94. Agency charges.—The bank may, in discounting any note, bill or other negotiable security or paper, *bona fide* payable at any place in Canada, other than that at which it is discounted, and other than one of its own places or seats of business, branches, agencies or offices of discount and deposit in Canada, receive and retain, in addition to the discount thereon, a sum not exceeding one-fourth of one per cent on the amount thereof; provided that the bank may make a minimum charge of twenty-five cents. 53 V., c. 31, s. 83.

This section governs agency charges for paper payable in Canada elsewhere than at an office of the discounting bank. The minimum charge is new.

95. Deposits and payments.—The bank may, subject to the provisions of this section, without

the authority, aid, assistance or intervention of any other person or official being required,—

- (a) receive deposits from any person whomsoever, whatever his age, status or condition in life, and whether such person is qualified by law to enter into ordinary contracts or not; and,
 - (b) from time to time repay any or all of the principal thereof, and pay the whole or any part of the interest thereon to such person, unless before such repayment the money so deposited in the bank is lawfully claimed as the property of some other person.
2. In the case of any such lawful claim the money so deposited may be paid to the depositor with the consent of the claimant, or to the claimant with the consent of the depositor.
 3. If the person making any such deposit could not, under the law of the province where the deposit is made, deposit and withdraw money in and from a bank without this section, the total amount to be received from such person on deposit shall not, at any time, exceed the sum of five hundred dollars. 53 V., c. 31, s. 84.

Deposits.—Sections 76 to 94 of the Act, except section 92, relate to banks as banks of discount; the present section and sections 92, 97 and 98 relate to them as banks of deposit. Although so little is said in the Act on the subject it is one of their most important functions. In Halsbury's Laws of England, vol. 1, at p. 568, it is said that “the business of banking, strictly speaking, is the

receipt of money from or on account of a customer, to be repaid on demand or when drawn on by cheque. The numerous other functions undertaken by modern bankers, such as payment of domiciled bills, custody of valuables, and discounting bills, do not come within the strict definition of banking business."

By the general adoption of the policy of branches a network of these institutions has been established throughout the Dominion, and in the older and wealthier portions of the country where there is more capital than is necessary for local requirements, they receive deposits which are transmitted to those points where the capital is not sufficient for the necessities of business. We have thus a system which works automatically and is admirably adapted to the development of the country.

While the paid-up capital of our banks was on September 30th, 1913, only \$105,894,600, their deposits in Canada were no less than \$1,037,140,400. These are received chiefly in three ways: (1) In the ordinary current commercial accounts; (2) Special deposits at interest by the Dominion and Provincial Governments and by corporations and individuals, for which latter deposit receipts as a rule are issued; and (3) Savings bank deposits, the bank having savings departments, where non-commercial accounts are kept on special terms, interest being generally credited half-yearly or oftener, and money usually withdrawn by receipt instead of by cheque and on the production of the depositor's pass book; notice of the intended withdrawal of large sums being often required, etc. These savings departments are not governed by the provisions of the Savings Bank Acts, R. S. C. c. 30 and 32; but are carried on by the banks under the Bank Act.

By section 54, the statement to be laid before the shareholders at the annual meeting must show not only the total amount of the deposits, but must distinguish between those bearing interest, and those not bearing

interest. In the monthly returns to the Government, Schedule D, separate statements are to be made of (1) deposits by the public, payable on demand in Canada; (2) deposits by the public, payable after notice, or on a fixed day, in Canada; (3) deposits elsewhere than in Canada; (4) deposits made by other banks in Canada.

Interest on deposits is not payable by a bank unless there is a special agreement to that effect: *Edwards v. Vere*, 5 B. & Ad. 282 (1833); or unless such an agreement is to be implied from the circumstances of the particular case: *Re East of England Banking Co.*, L. R. 4 Ch. 14 (1868); *Re Duncan & Co.*, [1905] 1 Ch. 307. The bank may allow any rate of interest whatever upon money deposited with it: sec. 92.

The executors of a depositor who had a large sum drawing interest at three per cent, and who was an indorser on unpaid promissory notes held by the bank, were held to be entitled to a set off instead of being charged five per cent on the notes and allowed only three per cent on the deposit. The claim of the bank is not correctly called a lien, which, strictly speaking, is a right upon the property of another, the true relation between the parties being that of a debtor and creditor: *Royal Trust Co. v. Molsons Bank*, 27 O. L. R. 441 (1912).

Deposits from disqualified persons.—As the subject of civil rights belongs exclusively to the provincial legislatures under sec. 92, s.-s. 13 of the B. N. A. Act, the classes of persons qualified to enter into contracts differ in the several provinces. The Dominion Parliament under its jurisdiction over the subject of banking has undertaken in this section to override the provincial legislation which disqualifies certain classes of persons from entering into such contracts, by declaring that each of such disqualified persons may deposit in and withdraw moneys from a bank, provided the deposit of such a person shall not, at any time, exceed \$500. Such disqualified persons are chiefly infants or minors in all the provinces, and married women in some of them.

In *Freeman v. Bank of Montreal*, 26 O. L. R. 451 (1912), the plaintiff, a young man of 18, deposited \$1,800 in the defendant bank, and seven months later drew it out by a cheque to the order of one who held a mortgage on his father's property. A year and half after he came of age, he brought this action to recover \$1,300 as having been illegally paid out by the bank. It was found that the bank had acted in good faith, and in ignorance of his minority, and it was held that this section imposes a restriction on deposit of money and not on its repayment, and that if the bank had learned of his infancy, its duty would have been to have repaid him the excess over \$500. It was also held that by section 48 of the Bills of Exchange Act that the holder of the cheque was entitled to receive payment and give a good discharge to the bank. Held also that he was disentitled by his laches.

Bank and depositor.—When money is paid into a bank it ceases to be the money of the person paying it in, and becomes the property of the bank. Nor does it become the property of the party to whose credit it is placed in the books of the bank. The latter simply becomes the creditor of the bank for the amount. The relation existing between the bank and its customer is not that of trustee and *cestui que trust*, or bailee and bailor; but that of debtor and creditor: *Foley v. Hill*, 2 H. L. Cas. 36 (1848); *Smith v. Leveaux*, 2 DeG. J. & S. at p. 5 (1863); *Re Agra & Masterman's Bank*, 36 L. J. Ch. 151 (1866).

Moneys deposited in a bank to current account are subject to the banker's lien unless paid in and received for a particular purpose: *Misa v. Currie*, 1 App. Cas. at p. 569.

Where a customer deposits a cheque and the bank places the amount to his credit, it thereupon becomes a holder for value, and if the conditions of sec. 56 of the Bills of Exchange Act are met, it is a holder in due course, and can collect the full amount of the cheque from

the drawer: *Bank of B. N. A. v. Warren*, 19 O. L. R. 257 (1909).

When a principal places money in a bank on the terms that a known agent shall draw upon it, he retains the power, if he rightly determines the agency, to require the bank to return the undrawn balance to him: *Société Coloniale v. London and Brazilian Bank* (1911), 2 K.B. 1024.

If a customer has several accounts in a bank he may specify at the time of a payment or deposit, to which of them it is to be applied. In default of his doing so, the bank may determine its application: *Wilson v. Hirst*, 4 B. & Ad. 760 (1833); *Simson v. Ingham*, 2 B. & C. 65 (1823); *Johnson v. Robarts*, L. R. 10 Ch. 505 (1875).

A customer of a bank had at the time of his death a certain sum to his credit, and the bank held two of his notes, one secured by an endorser,* and the other not secured. After his death the bank applied the whole sum on the latter note. This was upheld, although his estate was insolvent: *Re Williams*, 7 O. L. R. 156 (1903).

Where a number of deposits and withdrawals have been made, the question of the application of these often becomes a matter of importance. The general rule is that there is a presumption that the sum first paid in is that which is first paid out. This is a presumption, however, which may be rebutted: *Clayton's Case*, 1 Mer. 608 (1816). The rule in *Clayton's Case* applies where there is one unbroken account, even between *cestuis que trustent*. But when a bank applies specific receipts to the payment of a specific balance due by a customer, the rule does not apply: *Mutton v. Peat* (1899), 2 Ch. 556; nor will it be applied where it is contrary to the intention of the parties: *Deeley v. Lloyd's Bank* (1912), A. C. 756.

A bequest of the testator's "ready money" includes his money on deposit in a bank: *Parker v. Marchant*, 1

Younge & Collyer (Ch.) 290 (1842); *Stein v. Ritherdon*, 37 L. J. Ch. 369 (1868). The balance in a bank has been held to be included in a bequest of "all the debts due to me:" *Carr v. Carr*, 1 Mer. 541*n* (1811); and of "moneys coming to me:" *Re Derbyshire*, [1906] 1 Ch. 135; also in a bequest of "money in hand:" *Vaisey v. Reynolds*, 5 Russ. 12 (1828); and of "all my moneys:" *Manning v. Purcell*, 7 DeG. M. & G. 55 (1855).

Payments by a bank.—The ordinary mode of payment out of moneys by a bank to a depositor who has a current account is by the honoring of his cheques. In the case of an ordinary current account it is the duty of the bank to honor the cheques of the customer, provided there are funds, except in case of death or countermand: Bills of Exchange Act, sec. 167.

In the absence of instructions to the contrary it may also as his agent pay any bills or notes which he has made payable at the bank: *Jones v. Bank of Montreal*, 29 U. C. Q. B. 448 (1869); *Hubbert v. Home Bank*, 20 O. L. R. at p. 654 (1910); *Kymer v. Laurie*, 18 L. J. Q. B. 218 (1849); *Robarts v. Tucker*, 16 Q. B. 560 (1851); *Vagliano v. Bank of England*, [1891] A. C. 107. A bank may, however, decline to pay such instruments if it has not expressly or impliedly agreed to do so: *Robarts v. Tucker* and *Vagliano v. Bank of England*, *supra*. If it has so agreed and refuses to pay them it incurs the same liability as in refusing to pay a cheque: *Hill v. Smith*, 12 M. & W. 618 (1844); *Bell v. Carey*, 8 C. B. 887 (1849).

It does not appear to have been decided whether a bank is entitled to any time to enquire whether the endorsements of a bill or note payable to order are genuine. In *Robarts v. Tucker*, *supra*, Maule, J., thought it would be entitled to sufficient time to make reasonable enquiries; in the *Vagliano Case* (p. 157), Lord Macnaghten thought that the bank was obliged to pay off-hand.

When deposit receipts have been issued they usually contain the terms on which the money will be paid, or it may be a matter of agreement.

In the case of ordinary deposits and accounts in the savings department of a bank, the conditions as to payment are usually printed in the pass-book supplied to the customer. As a rule a receipt is taken from the customer for the amount paid out to him, and presentation of the pass-book required.

Money due a depositor or other customer by a bank being a chose in action, is assignable like other debts or choses in action. Such assignments not being dealt with by the Bank Act or the law merchant, are governed by the law of the province where the deposit is situate. It would pass to an assignee for the benefit of creditors under an assignment covering debts.

It would also be subject to an attachment (*saisie arrêt*) in the province of Quebec, and to a garnishee order in the other provinces: *Harris v. Cordingley*, Q. R. 16 S. C. 501 (1899); *Wentworth v. Smith*, 15 Ont. P. R. 372 (1893). Such a proceeding would justify a bank in not honoring any cheques, even those issued before the order, and although the balance exceeded the amount claimed: *Rogers v. Whiteley*, [1892] A. C. 118; *Yates v. Terry*, [1901] 1 Q. B. 102.

Cheques.—The general subject of cheques as negotiable instruments is dealt with in the Bills of Exchange Act, secs. 165 to 175 inclusive. These sections with full notes will be found in the present work immediately following the schedules to the present Act, and to them the reader is referred.

As above stated, money is ordinarily withdrawn from a bank in a current account by the cheques of the customer, and it is part of the law merchant that the bank shall honor these cheques when there are funds to meet them. The Bills of Exchange Act recognizes this obligation in section 167, when it speaks of “the duty and authority of a bank to pay a cheque.”

A bank having sufficient funds of the drawer of a cheque in its hands is bound to pay it, and in case of refusal is liable to an action of damages: *Marzetti v. Williams*, 1 B. & Ad. 415 (1830); *Whitaker v. Bank of England*, 6 C. & P. 700 (1835); *Foley v. Hill*, 2 H. L. Cas. 28 (1848); *Rolin v. Steward*, 14 C. B. 595 (1854); *Todd v. Union Bank*, 4 Man. R. 204 (1887); *Fleming v. Bank of New Zealand*, [1900] A. C. 577; *Perreault v. Merchants Bank*, Q. R. 27 S. C. 149 (1905). The damages recoverable by a non-trader for the wrongful refusal of a bank to allow him to withdraw a special deposit, are nominal or limited to interest on the money: *Henderson v. Bank of Hamilton*, 25 O. R. 641 (1894), 22 Ont. A. R. 414 (1895); *Bank of New South Wales v. Milvain*, 10 Viet. R. (Law) 3 (1884).

In order to relieve a banker from the consequences of paying money upon a forged cheque, it is not enough for him to show that the conduct of his customer enabled the fraud to be committed; he must show that the customer's conduct caused him to pay the money upon the forged cheque: *Lewes Sanitary Co. v. Barclay*, 22 T. L. R. 737; 95 L. T. 444 (1906).

Pass-books.—As a rule, customers having a current account in a bank, are furnished with pass-books, in which are entered the deposits as they are made, and also the withdrawals by cheque and otherwise, and which show the balance from time to time. The cheques and other vouchers for the moneys paid out by the bank are handed out to the customer at intervals depending upon the volume of the business, or the convenience of the parties, in many cases at the end of each month. A receipt is usually taken for these vouchers, and acknowledging the correctness of the account signed by the party receiving them, often a messenger or other subordinate employee of the customer. How far such entries should be evidence of a settled account has been a matter of controversy and has not been authoritatively or satisfactorily determined. It has been held that periodical acknowledgments given to a bank of the correctness of an account

cannot be set up as a bar to an enquiry into the account, when specific errors were charged to the bank: *Re Chatham Banner Co.*, 2 O. L. R. 672 (1901); a position that will scarcely be challenged.

The subject was discussed in two Ontario cases of considerable interest. In the first of these, *The Bank of Montreal v. The King*, it was considered in the Supreme Court, in the Court of Appeal, and by the trial Judge, in 38 S. C. R. at p. 272 (1907); 11 O. L. R. at pp. 599 and 605; and 10 O. L. R. at p. 126, respectively. It was held in all the Courts, that if a customer were precluded from questioning the correctness of the account, it would be ordinarily on the ground of estoppel, and as the doctrine of estoppel could not be invoked against the Crown, it did not avail the bank as a defence.

The second of these cases is *Montgomery v. Ryan*, 16 O. L. R. 75 (1908). The trial Judge had held that the signing of monthly acknowledgments of the correctness of the account as contained in the bank pass-book in which compound interest at the rate of 7 per cent was charged, did not bind the defendant even as to the charge of 7 per cent, the legal limit by the Bank Act. It was held, however, by the Court of Appeal, that such acknowledgments, although not sufficient to establish an acquiescence on the part of the defendant in the charge of compound interest which did not appear on the face of the account, were sufficient with other evidence to establish acquiescence on his part in the payment of 7 per cent simple interest.

In *Graves v. Home Bank*, 20 Man. R. 149 (1910), the bank had sold pledged goods without observing the requirements of sec. 89 of the Act, and had placed the proceeds to the credit of the customer. At the end of that month and of a number of those following the customer, sometimes personally, and sometimes by a duly authorized employee, on receiving the cheques and vouchers and a statement of the balance acknowledged

its correctness, and in consideration of the account not being then closed released the bank from all claims. This was held to be a bar to his claim respecting the pledged goods.

In England also the law upon the subject is said to be in an unsettled and unsatisfactory condition. In *Paget on Banking*, a chapter is devoted to the subject, and the cases of *Commercial Bank v. Rhind*, 3 Macq. House of Lords, 643 (1860); *Blackburn v. Cunliffe Brooks & Co.*, 22 Ch. D. 61 (1882), *Vagliano v. Bank of England*, 23 Q. B. D. 243 (1889), and [1891] A. C. 207, are discussed, as is also an unreported case of *Chatterton v. London and County Bank*, the particulars and proceedings of which are set out at length. The remarks of Lord Esher and Mr. Justice Mathew in the *Chatterton* case as to there being no obligation on the customer to examine his pass-book and to report any alleged errors to the bank are specially commented upon.

In *Kepitigalla Rubber Estates v. National Bank*, [1909] 2 K. B. 1010, it was held that a customer's taking his pass-book and the vouchers out of a bank, retaining the vouchers and returning the pass-book without objecting to any of the entries therein or the balance shown, did not amount to a settlement of account as between him and the bank. This case was followed in *Walker v. Manchester and Liverpool Banking Co.*, 29 T. L. R. 492 (1913).

The duty of the customer to make such an examination is more fully recognized in the American courts. Two leading cases on the subject are the *Leather Manufacturers' Bank v. Morgan*, 117 U. S. 96 (1885), and *Critten v. Chemical National Bank*, 171 N. Y. 219 (1902).

A pass-book, although subject to adjustment, is *prima facie* evidence against the bank of the amount standing to the credit of the customer. Where the customer in good faith, relying on the balance shown by the pass-book, drew a cheque for more than the proper balance,

which was dishonored, he recovered damages: *Holland v. Manchester Banking Co.*, 25 T. L. R. 386 (1909).

Deposit receipts.—When money is deposited with a bank which is not to be withdrawn in the ordinary course of business, but only after certain notice or after the expiration of a certain time, a deposit receipt is usually given. A considerable controversy has arisen as to whether these instruments are negotiable and transferable by delivery or endorsement. Of course much will depend upon their precise terms. Those in question in the earlier Canadian cases had not the words “bearer” or “order,” and it was held that the holder by endorsement could not recover in his own name. See *Mander v. Royal Canadian Bank*, 20 U. C. C. P. 125 (1869); *Bank of Montreal v. Little*, 17 Grant, 313 (1870); *Lee v. Bank B. N. A.*, 30 U. C. C. P. 255 (1879). In *Voyer v. Richer*, 13 L. C. J. 213 (1869), the Quebec Courts held that even where the receipt was payable to order it was not negotiable. In the Privy Council, L. R. 5 P. C. 461 (1874), it was said that there was “high authority in favor of considering it to be negotiable,” but the case was decided on another ground.

In *Re Central Bank*, 17 O. R. 574 (1889), the receipt was in the following form: “Received from Messrs. Cox & Co., the sum of six thousand dollars, which this bank will repay to the said Cox & Co., or order, with interest at four per cent per annum, on receiving 15 days’ notice. No interest will be paid unless the money remains with this bank six months. This receipt to be given up to the bank when payment of either principal or interest is required.” Boyd, C., in giving judgment in favor of the holder by endorsement, said: “I have a very strong opinion that the deposit receipt as drawn is a negotiable instrument, under which the claimants are entitled to succeed as upon a promissory note made by the bank.” He added that, being payable to order, it was meant to be transferable by endorsement, and the bank which had issued it in that form was estopped from denying its negotiability.

A Minnesota bank deposit receipt was held on evidence as to the law of that State to be a negotiable instrument: *Security Nat. Bank v. Pritt*, 14 W. L. R. (Sask.) 216 (1910).

Under the Bills of Exchange Act the words "order" or "bearer" are not required to make an instrument a promissory note. If intended that it shall not be negotiable, it should contain the words "not negotiable," or some words to the like effect: sec. 21. It would then require to be transferred in the manner prescribed by the law of the respective provinces for the transfer of choses in action or rights of action; that is by assignment and not by simple endorsement. After such assignment the assignee can sue upon it in his own name. See R. S. O. 1914, chap. 109, sec. 49; Rev. Stat. N. S. chap. 155, sec. 19 (5); Con. Stat. N. B. chap. 111, sec. 155; Rev. Stat. Man. chap. 40, sec. 3, 39 (e); Cons. Ord. N. W. T. chap. 41; Rev. Stat. Sask. chap. 146. In Quebec the assignee has not possession available against third persons until a copy of the transfer has been served on the debtor, unless the latter is a party to it: C. C. Arts. 1570, 1571. The institution of an action against the debtor is a sufficient service of the transfer of the debt: *Bank of Toronto v. St. Lawrence Fire Ins. Co.*, [1903] A. C. 59; *Sorel v. Quebec Southern Ry. Co.*, 36 S. C. Can. 686 (1905).

A deposit receipt is a good subject of a *donatio mortis causa* even when the order for its payment is in the form of a cheque signed by the depositor: *In re Dillon, Duffin v. Duffin*, 44 Ch. D. 76 (1890).

Saderquist v. Ontario Bank, 15 Ont. A. R. 609 (1889), is a case where a bank was compelled to pay the amount of a deposit receipt a second time. The depositor, on leaving the country for some months, gave the receipt to a friend, who forged his name and drew the money. On the return of the depositor he learned what had been done, but did not notify the bank or take any steps to recover. The friend left the country, and after eighteen months the depositor sued the bank and he was held entitled to recover.

Scott v. Bank of New Brunswick, 31 N. B. 21 (1891), is a very similar case, which resulted differently. In this case the friend with whom the receipt was left owed the depositor other sums, and on the return of the latter he took a mortgage from him. The jury found that the amount of the deposit receipt was not included in the mortgage, and gave a verdict for the depositor; but the Court held that he was estopped from recovering by his conduct and dismissed his action.

Situs of bank deposits. — Bank deposits, like bank shares, are personal property, and, as a general rule, may be said to be governed by the law of the domicile of the owner, but our Courts have held that for certain purposes there are exceptions to the application of the maxim *mobilia sequuntur personam*. These questions have arisen chiefly under Succession Duty Acts and garnishee proceedings.

In *Attorney-General v. Newman*, 1 O. L. R. 511 (1901), an American citizen domiciled and resident in the State of Michigan had made deposits in branches of Canadian banks at Windsor and London, some of which had their head office in Ontario, and some in other provinces, and deposit receipts had been given to him which he kept in the State of Michigan. It was held by the Court of Appeal, affirming the Chancellor, that these deposits were assets of his estate in Ontario, to be administered by his Ontario administrator, and subject to the Ontario Succession Duty Act. This decision was followed in British Columbia in *Re Succession Duty Act*, 9 B. C. R. 174 (1902).

In *The King v. Lovitt*, [1912] A.C. 212, a resident of Nova Scotia had made a deposit in the St. John (N.B.) branch of the Bank of British North America, which has its head office in London, England. The Privy Council, reversing the Supreme Court of Canada, and following *Blackwood v. Reg.*, 8 App. Cas. 93 (1882), held that for the purposes of succession duty the deposit was

situate at St. John and not at the domicile of the deceased in Nova Scotia or at the head office of the bank in London.

A case having an indirect bearing on this question came before the Privy Council in *The Royal Bank v. The King*, [1913] A. C. 283. The Royal Bank received on deposit at its New York office the proceeds in London of a mortgage bond issue by the Alberta Railway Co. guaranteed by the Government of Alberta. The head office of the bank, in Montreal, opened in its Edmonton (Alta.) branch a special railway account in the name of the Provincial Treasurer, no money being sent there in specie, and the account remaining under the control of the head office. The Alberta Legislature passed an Act reciting that the railway defaulted in payment of interest on the bonds and in construction of the line and enacting that the proceeds of the bonds should form part of the revenue fund of the province free from all claim of the railway company or its assigns. It was held that the bondholders having subscribed their money for a purpose which had failed, were entitled to receive their money from the bank at its head office in Montreal; this was a civil right existing and enforceable outside the province, and that the province could not validly legislate in derogation of that right.

In *Harris v. Cordingley*, Q. R. 16 S. C. 501 (1899), it was sought to attach at the head office of a bank in Montreal the deposit of a deceased depositor in its Winnipeg branch. The bank answered that it could not be held to pay elsewhere than in Winnipeg, and that it had paid the money into Court at Winnipeg under an order of Court. The contestation of the declaration of the bank was dismissed.

In *Wentworth v. Smith*, 15 Ont. Pr. R. 372 (1893), Canadian banks having their head offices outside Ontario, having branches in Ontario, were held to be resident "within Ontario" within the meaning of Rule 935,

and that moneys deposited with them at such branches in Ontario might be attached as debts due to the depositors.

A judgment was obtained in Ontario on the 8th August, 1911. The defendant had a deposit in the Traders Bank at Ingersoll, Ont. On August 9th, he withdrew the money and deposited it in the Calgary branch of the same bank. A garnishee order was obtained and served on the Ingersoll branch August 17th, and on the head office August 18th, the latter copy being sent to the Calgary branch. After its receipt there the defendant was allowed to draw out his money. It was held, on appeal to a Divisional Court, that under Con. Rule 911, which was validated by the Ontario Legislature, this indebtedness was subject to attachment in the Ontario Courts, and that as no notice had been given to the Attorney-General, the question of the validity of the legislation could not be raised: *McMulkin v. Traders Bank*, 26 O. L. R. 1 (1912).

96. Payment of trust deposits.—The bank shall not be bound to see to the execution of any trust, whether expressed, implied or constructive, to which any deposit made under the authority of this Act is subject.

2. Except only in the case of a lawful claim, by some other person, before repayment, the receipt of the person in whose name any such deposit stands, or, if it stands in the names of two persons, the receipt of one, or, if it stands in the names of more than two persons, the receipt of a majority of such persons, shall, notwithstanding any trust to which such deposit is then subject, and whether or not the bank sought to be charged with such trust, and with which the deposit has been made, had notice

thereof, be a sufficient discharge to all concerned for the payment of any money payable in respect of such deposit.

3. The bank shall not be bound to see to the application of the money paid upon such receipt.
53 V., c. 31, s. 84.

Sub-section 1 of section 52 contains a provision respecting trust shares of the bank similar to that of sub-section 1 of this section as to deposits, and the reader will there find a discussion of the liability of the bank with respect to these trusts. Sub-section 2 of that section differs in that the receipt of one of two or more trustees is sufficient for any dividend or bonus payable thereon; whereas by this section the receipt of a majority of the trustees is required for the payment of a deposit if there are more than two of them, thus following the general rule under Dominion Statutes: R. S. C. c. 1, s. 31 (c).

Such receipt, however, is not to be a sufficient discharge "in the case of a lawful claim by some other person before repayment" by the bank. A lawful claim was defined in *Re Bank of Toronto and Dickinson*, 8 O. W. R. 323 (1906), as "one which is prima facie substantial."

The rule of English law is that in case of money payable to trustees, the receipt must be signed by all the trustees and not by the majority merely, or it will not be valid: *Walker v. Symonds*, 3 Swanston, 63 (1818); *Hall v. Franck*, 11 Beav. 519 (1849); *Lee v. Sankey*, L. R. 15 Eq. 204 (1873). In the case of ordinary joint creditors payment to one and a receipt from him is sufficient: *Wallace v. Kelsall*, 7 M. & W. 264 (1840); *Heilbut v. Nerill*, L. R. 5 C. P. 478 (1870). In the case of money paid into a bank on joint account it is generally implied from the purpose of such an account, and the relation between bankers and their customers, that it shall not

be withdrawn without the joint order of all; and the banker is not discharged by a payment to one only: Per Lord Tenterden, C.J., in *Innes v. Stephenson*, 1 M. & Rob. 145 (1831). See also *Husband v. Davis*, 10 C. B. 645 (1851); and *Brandon v. Scott*, 7 E. & B. 234 (1857).

Under the law of Quebec, payment may be validly made to one of several joint and several creditors, and a receipt given by him will bind the others; but a release or discharge given by one without payment will avail only for his own share: C. C. Arts. 1100, 1101.

It will be seen that this section of the Act differs from the law in England as to a receipt from one of two joint depositors, or from the majority of a larger number. If it is desired that the deposit shall not be withdrawn in this manner, then notice to that effect should be given to the bank.

In the case of *Bailey v. Jellett*, 9 Ont. A. R. 187 (1884), it was sought to hold a bank responsible for moneys belonging to a client which a solicitor had improperly paid into the bank in his own name, and which he had withdrawn, on the ground that the bank manager was aware of the trust. The Court held that the bank was not liable; but that it was liable for notes and cheques of the solicitor paid after the bank had notice of his death; that these sums and the balance at his credit were to be treated as trust moneys; and that the client whose money was paid in last had the preference. See *Wood v. Stenning*, [1895] 2 Ch. 433.

The leading English case on the subject is *Gray v. Johnston*, L. R. 3 E. & I. App. 1 (1868), where Lord Cairns says, p. 11: "In order to hold a banker justified in refusing to pay a demand of his customer, the customer being an executor, and drawing a cheque as executor, there must, in the first place, be some misapplication, some breach of trust, intended by the executor, and there must, in the second place, as was said by Sir John Leach, in the well known case of *Keane v. Robarts*,

4 Maddock, 357 (1819), be proof that the bankers are privy to the intent to make this misapplication of the trust funds. And to that I think I may safely add, that if it can be shewn that any personal benefit to the bankers themselves is designed or stipulated for, that circumstance, above all others, will most readily establish the fact that the bankers are in privy with the breach of trust which is about to be committed." In the same case Lord Westbury says, p. 14: "Supposing that a banker becomes incidentally aware that a customer, being in a fiduciary or representative capacity, meditates a breach of trust, and draws a cheque for that purpose, the banker, not being interested in the transaction, has no right to refuse the payment of the cheque. . . . If an executor or a trustee who is indebted to a banker, or to another person, having the legal custody of the assets of a trust estate, applies a portion of them in the payment of his own debt to the individual having that custody, the individual receiving the debt has at once not only abundant proof of the breach of trust, but participates in it for his own personal benefit." It is not necessary that the word "trust" or "trustee" should be used by the customer; it is enough that there should be something to indicate to the bank, or that the bank should know that other persons are beneficially interested. See *Clench v. Consolidated Bank*, 31 U. C. C. P. 169 (1880); *Ex parte Kingston*, L. R. 6 Ch. App. 632 (1871).

Subsequent cases in England have not been consistent as to the degree of knowledge that would render a banker liable for a breach of trust committed by a depositor, or as to the facts that should put a banker upon further enquiry. If the banker is to derive a benefit from the transaction his conduct would be more closely scrutinized. In *Forston v. Manchester & Liverpool Banking Co.*, 44 L. T. 406 (1881), it was held that a bank could not retain the benefit of a cheque drawn upon a trust fund and paid into an overdrawn private account; while in *Coleman v. Bucks and Oxon Bank*, [1897] 2 Ch. 243, under circumstances nearly the same the transaction was upheld.

For examples of cases where it was held that the circumstances attending the placing of company or partnership funds to the credit of a manager or partner who was a private depositor, were not sufficiently suspicious to put a banker upon enquiry: see *Bank of New South Wales v. Goulbourn Valley Butter Co.*, [1902] A. C. 543, and *Ross v. Chandler*, 19 O. L. R. 584 (1909); 45 S. C. R. 127 (1911); *Toronto Club v. Dominion Bank*, 330 (1909).

97. Depositors of \$500 or under.—If a person dies, having a deposit with a bank not exceeding the sum of five hundred dollars, the production to the bank of—

- (a) any authenticated copy of the probate of the will of the deceased depositor, or of letters of administration of his estate, or of letters of verification of heirship, or of the act of curatorship or tutorship, granted by any court in Canada having power to grant the same, or by any court or authority in England, Wales, Ireland or any British colony, or of any testament, testamentary or testament dative expedé in Scotland; or,
- (b) an authentic notarial copy of the will of the deceased depositor, if such will is in notarial form, according to the law of the province of Quebec; or,
- (c) if the deceased depositor died out of His Majesty's dominions, any authenticated copy of the probate of his will, or letters of administration of his property, or other document of like import, granted by any court or authority having the requisite power in such matters; shall be sufficient justification and authority

to the directors for paying such deposit, in pursuance of and in conformity to such probate, letters of administration, or other documents as aforesaid.

2. When the authenticated copy or other document of like import is produced to the bank under sub-section 1 of this section, there shall be deposited with the bank a true copy thereof. 63-64 V., c. 26, s. 20.

Sub-section 2 is new and allows a true copy to be deposited in lieu of an authenticated copy. No ancillary probate, or ancillary letters, etc., are required where the deceased depositor had only \$500 or less in the bank.

If the bank has an office in the country or province where the original probate, etc., issued, it may pay there a deposit of any amount to the person appointed to represent the deceased. *Irwin v. Bank of Montreal*, 38 U. C. Q. B. 375 (1876), *Bain v. Torrance*, 1 Man. R. 32 (1884).

Section 51 dispenses with ancillary probate, etc., with respect to shares without limit as to the number or amount.

DOMINION GOVERNMENT CHEQUES.

98. The bank shall not charge any discount or commission for the cashing of any official cheque of the Government of Canada or of any department thereof, whether drawn on the bank cashing the cheque or on any other bank. 53 V., c. 31, s. 103.

A bank is not compelled to cash a Government cheque, unless it is one drawn upon itself by the Government as a customer; but if it undertakes to do so it must pay the full face value. It cannot make the collection or agency

charges allowed by sections 93 and 94 when it discounts the paper of another party. No penalty is prescribed in the Act for a breach of this section, but it would be a violation of section 191 of the Criminal Code, and punishable by a fine under sections 1052 and 1035.

PURCHASE OF THE ASSETS OF A BANK.

Before 1900 the purchase of the assets of one bank by another bank, now authorized by the following sections 99 to 111 inclusive, could only have been carried out under a special Act of Parliament. The Act was passed to meet the case of the purchase of the Bank of British Columbia by the Canadian Bank of Commerce, the consideration in that case being \$2,000,000 stock of the purchasing bank and \$312,000 in cash. The purchase took effect on the 2nd of January, 1901.

Since that time, under the provisions of these sections, the following purchases have been made: The Exchange Bank of Yarmouth, the People's Bank of Halifax and the People's Bank of New Brunswick, by the Bank of Montreal; the Halifax Banking Company, the Merchants' Bank of Prince Edward Island and the Eastern Townships Bank, by the Canadian Bank of Commerce; the Commercial Bank of Windsor, by the Union Bank of Halifax; the Summerside Bank, by the Bank of New Brunswick; the Western Bank of Canada, by the Standard Bank of Canada; the St. Stephen's Bank, by the Bank of British North America; the Banque Internationale, by the Home Bank of Canada; the Traders Bank of Canada, by the Royal Bank of Canada; and the Bank of New Brunswick, by the Bank of Nova Scotia. The Northern Bank and the Crown Bank were merged by special statute of 1908, c. 137, under the name of the Northern Crown Bank.

99. Any bank may sell the whole or any portion of its assets to any other bank which may purchase such assets and the selling and purchasing banks may, for such purposes, enter into

an agreement for sale and purchase, which agreement shall contain all the terms and conditions connected with the sale and purchase of such assets.

2. No agreement by a bank to sell the whole or any portion of its assets to another bank shall be made unless and until the Minister, in writing, consents that an agreement under sub-section 1 of this section may be entered into between the two banks. 63-64 V., c. 26, s. 33. Am.

Sub-section 2 is new, and was passed at the late session in response to a claim in the country and in Parliament that a continuance of the merger of banks at the rate at which it had been going on of late years was not in the public interest. The consent of the Minister is to be obtained at an early stage in order that he may, if he considers the merger undesirable, object before the agreement is entered into or the meeting of shareholders called.

The language of the section, if taken literally, might be construed to mean that a bank could not sell a single negotiable security or any portion of its property to another bank except by the machinery provided in the succeeding sections. Section 111, however, makes it apparent that it is only when the selling bank is giving up the business of banking that these sections apply. It was argued in *Montgomery v. Ryan*, 16 O. L. R. 75 (1908), that no other sales were permitted by the Act, but the origin and purpose of these sections is pointed out at pages 99 and 100. Independently of them a bank may still exercise the powers conferred on it by section 76 and other sections of the Act, and by R. S. C. c. 1, s. 30 (*a*), viz.: “acquire and hold personal property or movables for the purposes for which the corporation is constituted, and alienate the same at pleasure.”

These sections were very fully discussed in the Ontario Courts and the Privy Council in connection with an agreement between the Ontario Bank and the Bank of Montreal. The former being in a desperate condition on the 13th of October, 1906, the latter agreed to come to its relief, to take immediate possession of its offices and meet its liabilities as they became due, and thus averted a financial panic. An agreement was drawn up and executed whereby the Bank of Montreal was to purchase by way of discount and re-discount at the rate of six per cent all the call and current loans and overdue debts of the Ontario Bank, and to receive all the securities in connection therewith, and apply the proceeds towards paying the debts of the latter; and the Ontario Bank to realize upon its other property, call in the double liability and hand over the proceeds to the Bank of Montreal, which was to allow in the final settlement \$150,000 for the indirect benefit accruing to it. The Ontario Bank was subsequently placed in liquidation, and the liquidator and a contributory contested the claim of the Bank of Montreal, alleging that the agreement was *ultra vires* for non-compliance with the provisions of these sections of the Bank Act. The Ontario Courts held that the transaction was within the powers of the bank and the directors, and was not a sale of assets within the meaning of these sections: *Re Ontario Bank*, 29 O. L. R. 1 (1910). Affirmed by the Privy Council, *McFarland v. Bank of Montreal*, [1910] A. C. 96.

100. Consideration.—The consideration for any such sale and purchase may be as agreed upon between the selling and purchasing banks.

2. If the consideration, or any portion thereof, is shares of the capital stock of the purchasing bank, the agreement shall provide for the amount of the shares of the purchasing bank to be paid to the selling bank.

3. Until such shares so paid to the selling bank have been sold by such bank, or have been distributed among and accepted by the shareholders of such bank, they shall not be considered issued shares of the purchasing bank for the purposes of its note circulation. 63-64 V., c. 26, s. 34.

101. Submission to selling shareholders.—The agreement of sale and purchase shall be submitted to the shareholders of the selling bank, either at the annual general meeting of such bank or at a special general meeting thereof called for the purpose.

2. A copy of the agreement shall be mailed, post paid, to each shareholder of such bank to his last known address, at least four weeks previously to the date of the meeting at which the agreement is to be submitted, together with a notice of the time and place of the holding of such meeting. 63-64 V., c. 26, s. 35.

A special general meeting requires six weeks' public notice in one or more newspapers published at the place where the head office of the bank is situate, and in the *Canada Gazette*: secs. 31 and 2, s.-s. 2.

102. Approval of agreement.—If at such meeting the agreement is approved by resolution carried by the votes of shareholders, present or represented by proxy, representing not less than two-thirds of the amount of the subscribed capital stock of the bank, the agreement may be executed under the seals of the banks, parties thereto, and application may be

made to the Governor in Council, through the Minister, for approval thereof.

2. Until the agreement is approved by the Governor in Council it shall not be of any force or effect. 63-64 V., c. 26, s. 36.

The voting is by ballot; one vote for each share, held for at least thirty days: sec. 32. Fully paid-up and partly paid-up shares count equally: *Purdum v. Ontario Loan and Debenture Co.*, 22 O. R. 597 (1892).

The Minister is the Minister of Finance and Receiver-General: sec. 2 (b).

- 103. Approval by purchasing bank.**—If the agreement provides for the payment of the consideration for such sale and purchase, in whole or in part, in shares of the capital stock of the purchasing bank, and for such purpose it is necessary to increase the capital stock of such bank, the agreement shall not be executed on behalf of the purchasing bank, unless nor until it is approved by the shareholders thereof at the annual general meeting, or at a special general meeting of such shareholders. 63-64 V., c. 26, s. 37.

No particular proportion of the stock of the purchasing bank requires to be represented at this meeting or to vote in its favor, as is required by section 102 in the case of the selling bank; a simple majority of the shares voting at the meeting is sufficient.

- 104. Approval by government.**—The Governor in Council may, on the application for his approval of the agreement, approve of the increase of the capital stock of the purchasing

bank, which is necessary to provide for the payment of the shares of such bank to the selling bank, as provided in the said agreement. 63-64 V., c. 26, s. 38.

105. Sections 33 and 34 not to apply.—The provisions of this Act with regard to—

- (a) the increase of the capital stock of the bank by by-law of the shareholders approved by the Treasury Board and,
- (b) the allotment and sale of such increased stock; shall not apply to any increase of stock made or provided for under the authority of the last two preceding sections. 63-64 V., c. 26, s. 38.

The approval of the agreement by the shareholders and the approval by the Governor in Council take the place of the by-law increasing the stock in section 33 and the approval of the Treasury Board. Stock for the purchase of another bank need not be allotted to existing shareholders *pro rata*.

106. Conditions of approval.—The approval of the Governor in Council shall not be given to the agreement, unless—

- (a) the consent of the Minister as prescribed by sub-section 2 of section 99 of this Act has been given;
- (b) the approval of the agreement is recommended by the Treasury Board;
- (c) the application for approval thereof is made, by or on behalf of the bank executing it, within three months from the date of execution of the agreement; and,

(d) it appears to the satisfaction of the Governor in Council that all the requirements of this Act in connection with the approval of the agreement by the shareholders of the selling and purchasing banks have been complied with, and that, after the approval by the shareholders of the selling bank, notice of the intention of the banks to apply to the Governor in Council for the approval of the agreement has been published for at least four weeks in *The Canada Gazette*, and in one or more newspapers published in places where the chief offices of the banks are situate.

2. Such banks shall afford all information that the Minister requires.
3. Nothing herein contained shall be construed to prevent the Governor in Council or the Treasury Board from refusing to approve of the agreement or to recommend its approval. 63-64 V., c. 26, s. 39. Am.

Clause (a) is new, as also the words "after the approval by the shareholders of the selling bank" in clause (d).

107. Further conditions.—The agreement shall not be approved of unless it appears that—

- (a) proper provisions have been made for the payment of the liabilities of the selling bank;
- (b) the agreement provides for the assumption and payment by the purchasing bank of the notes of the selling bank issued and intended for circulation, outstanding and in circulation; and,

- (c) the amounts of the notes of both the purchasing and selling banks, issued for circulation, outstanding and in circulation, as shown by the then last monthly returns of the banks, do not together exceed the then paid-up capital of the purchasing bank and the amount (if any) held for both of the said banks in the central gold reserves referred to in section 61 of this Act; or if the amount of such notes does exceed such paid-up capital and the amount so held, an amount in cash, equal to the excess of such notes over such paid-up capital and the amount so held, has been deposited by the purchasing bank with the Minister.
2. The amount so deposited under paragraph (c) of sub-section 1 of this section shall be held by the Minister as security for the redemption of the said excess of notes; and when the amount of the notes of the two banks outstanding and in circulation is less than the aggregate of the paid-up capital of the purchasing bank, the amount aforesaid (if any) held in the central gold reserves, together with the amount so deposited, the difference shall, from time to time, be repaid by the Minister out of the deposit, to the extent thereof, to the purchasing bank, but without interest on the application of such bank, and on the production of such evidence as the Minister may require to show the amount of the notes of the two banks then outstanding and in circulation. 63-64 V., c. 27, s. 1. Am.

Clause (c) and sub-section 2 have been amended on account of the provisions of section 61 as to central gold reserves.

108. Notes of selling bank.—The notes of the selling bank so assumed and to be paid by the purchasing bank shall, on the approval of the agreement, be deemed to be, for all intents and purposes, notes of the purchasing bank issued for circulation; and the purchasing bank shall be liable in the same manner and to the same extent as if it had issued them for circulation.

2. The amount at the credit of the selling bank in the Circulation Fund shall, on the approval of the agreement, be transferred to the credit of the purchasing bank.
3. The trustees shall not permit any part of the deposit (if any) of the selling bank in the central gold reserves to be withdrawn under the provisions of this Act after the last juridical day of the month in which notice of intention to apply to the Governor in Council for approval of the agreement has been given, and pending such approval, unless and until the trustees are notified in writing by the Minister of his consent thereto; and on the approval of the agreement the trustees shall hold the deposit (if any) for and as if such deposit had been originally made by the purchasing bank.
4. The notes of the selling bank shall not be re-issued, but shall be called in, redeemed and

cancelled as quickly as possible. 63-64 V., c. 26, s. 41. Am.

Sub-section 3 is new. As to the Circulation Fund, see sections 64 to 70, and as to the issue and circulation of notes, see section 61.

109. Evidence of approval.—The approval by the Governor in Council of the agreement shall be evidenced by a certified copy of the order in council approving thereof.

2. A copy of such order in council or extract thereof, and a copy of such agreement, purporting to be certified to be true by the clerk or assistant or acting clerk of the King's Privy Council for Canada shall, in all courts of justice and for all purposes, be prima facie evidence of the said agreement, and of its due execution, and of its approval by the Governor in Council, and of the regularity of all proceedings in connection therewith. 63-64 V., c. 26, s. 42. Am.

Sub-section 2 has been amended to make its meaning more clear.

110. Assets vest in purchasing bank. — On the agreement being approved of by the Governor in Council, the assets therein referred to as sold and purchased shall, in accordance with and subject to the terms thereof, and without any further conveyance, become vested in the purchasing bank.

2. The selling bank shall, from time to time, subject to the terms of the agreement, execute

such formal and separate conveyances, assignments and assurances, for registration purposes or otherwise, as are reasonably required to confirm or evidence the vesting in the purchasing bank of the full title or ownership of the assets referred to in the agreement. 63-64 V., c. 26, s. 43.

- 111. Selling bank to cease business.**—As soon as the agreement is approved of by the Governor in Council, the selling bank shall cease to issue or re-issue notes for circulation, and shall cease to transact any business, except such as is necessary to enable it to carry out the agreement, to realize upon any assets not included in the agreement, to pay and discharge its liabilities, and generally to wind up its business; and the charter or Act of incorporation of such bank, and any Acts in amendment thereof then in force, shall continue in force only for the purposes in this section specified. 63-64 V., c. 26, s. 44.

RETURNS BY THE BANK TO GOVERNMENT.

Besides the detailed statements which the directors are required to present to the shareholders, at the annual meeting, by section 54, and any further statements ordered by the shareholders under section 55, the bank is obliged to make monthly returns to the Government by section 112, and the Minister of Finance may call for special returns under section 113. It must also make an annual return of all dividends and balances unpaid for more than five years and send a list of shareholders: sec. 114. The monthly returns and annual business statements are keenly examined by the public, and form the topics of critical articles in the financial and commercial journals.

112. Monthly returns.—Monthly returns shall be made by the bank to the Minister in the form set forth in Schedule D to this Act.

2. Such returns shall be made up and sent in within the first twenty days of each month, and shall exhibit the condition of the bank on the last juridical day of the month last preceding.

3. Notwithstanding anything in this section, whenever, in the usual course of the post, the return of a branch or agency for the last juridical day of the month, mailed at the branch or agency on or before the second day of the following month, does not reach—

(a) the chief office of the bank on or before the eighteenth day of the month; or,

(b) the office of the general manager, if the office of the general manager is at a place other than the chief office of the bank, on or before the fifteenth day of the month;

the return last received from any such branch, exhibiting as far as that branch is concerned, the condition of the bank at the date for which it purports to be made, may be used in the compilation of the monthly return called for by this section.

4. The monthly returns shall be signed by the chief accountant or by the acting chief accountant and by the president, or a vice-president, or the director then acting as president, and by the general manager or other principal officer of the bank next in authority

in the management of the affairs of the bank at the time at which the declaration is signed.

5. As soon as may be after the annual general meeting there shall be sent to the Minister the names of the directors elected thereat and the names of the president and vice-presidents, and should any casual vacancy occur in the membership of the board of directors, or in the office of president, or vice-president, the Minister shall forthwith be notified of the name of the person by whom the vacancy has been filled.
6. If any change is made in the holder of the office of chief accountant or of general manager, the Minister shall forthwith be notified of the name of the person by whom the vacancy has been filled.
7. In the case of the Bank of British North America the returns called for by this section shall be signed by the officer of that bank known as the assistant secretary in the place of the chief accountant as hereinbefore in this section prescribed, and by the general manager at the chief office of that bank under this Act, in the place of the president and general manager as hereinbefore prescribed, and the part of such return containing the respective forms of declaration in Schedule D shall, for the purposes of returns by the said bank, be modified accordingly.
8. Any other returns required to be made by a bank under the provisions of this Act shall in

like manner in the case of the Bank of British North America be signed by the officers of that bank who are referred to in the next preceding sub-section; and the part, if any, of such returns containing the respective forms of declaration shall, for the purposes of returns by the said bank, be modified accordingly. 53 V., c. 31, s. 85. Am.

In sub-section 2 the word twenty has been substituted for fifteen. Sub-sections 3, 5, 6, 7 and 8 are new. In sub-section 4 changes have been made as to the officers who are to sign.

A glance at Schedule D shows that it covers no less than 49 items of information concerning the position and business of the bank, an increase of 7 over the previous requirement.

The penalty for not sending in these returns on time is \$50 a day: sec. 147.

It may be difficult always to classify the transactions of the bank under the proper items in the schedule. Where on a prosecution for making false returns, the Judge directed the jury as a matter of law, that certain sums borrowed by the bank from other banks, and for which deposit receipts payable on time were granted, were improperly classified as deposits instead of loans, it was held that this was a misdirection, and that the question of such classification was one of fact for the jury. In the same case it was held that where the bank took demand notes to cover over-drafts, these were improperly classified as current loans: *Reg. v. Hincks*, 24 L. C. J. 116 (1879).

113. Special returns.—The Minister may also call for special returns from any bank, whenever, in his judgment, they are necessary to afford a full and complete knowledge of its condition.

2. Such special returns shall be made and signed in the manner and by the persons specified in the last preceding section.
3. Such special returns shall be made and sent in within thirty days from the date of the demand therefor by the Minister: Provided that the Minister may extend the time for sending in such special returns for such further period, not exceeding thirty days, as he thinks expedient. 53 V., c. 31, s. 86.

114. Annual returns. — The bank shall, within twenty days after the close of each calendar year, transmit or deliver to the Minister a return—

- (a) of all dividends which have remained unpaid for more than five years; and,
 - (b) of all amounts or balances in respect of which no transactions have taken place, or upon which no interest has been paid, during the five years prior to the date of such return; Provided that, in the case of moneys deposited for a fixed period, the said term of five years shall be reckoned from the date of the termination of such fixed period.
2. The return mentioned in the last preceding sub-section shall set forth—
- (a) the name of each shareholder or creditor to whom such dividends, amounts or balances are, according to the books of the bank, payable;
 - (b) the last known address of each such shareholder or creditor;

- (c) the amount due to each such shareholder or creditor;
 - (d) the branch or agency of the bank at which the last transaction took place;
 - (e) the date of such last transaction; and,
 - (f) if such shareholder or creditor is known to the bank to be dead, the names and addresses of his legal representatives, so far as known to the bank.
3. The bank shall likewise, within twenty days after the close of each calendar year, transmit or deliver to the Minister a return of all certified cheques, drafts or bills of exchange, issued by the bank to any person, and remaining unpaid for more than five years prior to the date of such return, setting forth so far as known,—
- (a) the names of the persons to whom, or at whose request, such drafts, certified cheques, or bills of exchange were issued;
 - (b) the addresses of such persons;
 - (c) the names of the payees of such drafts or bills of exchange;
 - (d) the amounts and dates of such certified cheques, drafts or bills of exchange;
 - (e) the names of the places where such certified cheques, drafts or bills of exchange were payable; and,
 - (f) the branches or agencies of the bank respectively from which such drafts, certified cheques, or bills of exchange were issued.

4. If a dividend, amount or balance, certified cheque, draft, or bill of exchange is for a less sum than five dollars, and returns in respect thereof have been made under the preceding provisions of this section for five consecutive years, the bank may hereafter omit from the respective returns particulars required by the said provisions with regard to any such dividend, amount or balance, certified cheque, draft or bill of exchange.
5. The returns required by the foregoing provisions of this section shall be accompanied by declarations which shall be a part of the return, and the declarations shall be in the form set forth in Schedule F to this Act, and shall be signed by the chief accountant, and by the president or a vice-president or the director then acting as president, and by the general manager or other principal officer of the bank next in authority in the management of the affairs of the bank at the time at which the declaration is signed.
6. The bank shall transmit by registered post to the person to whom any such dividend, amount or balance is payable, and to the person to whom (in so far as known to the bank) and to the person at whose request any such draft, certified cheque or bill of exchange was issued, to the last known post office address of each person as shown by the books of the bank, a notice in writing stating that such dividend remains unpaid, or that in respect of such

amount or balance no transaction has taken place or no interest has been paid, or that such draft, certified cheque or bill remains unpaid, as the case may be.

7. The notice called for by the next preceding subsection is required to be given once only, namely, during the month of January next after the end of the first five-year period in respect of which—
 - (a) the dividend has remained unpaid; or,
 - (b) no transaction has taken place or no interest has been paid in connection with such amount or balance; or,
 - (c) the draft, certified cheque or bill has remained unpaid.
8. The bank shall, within twenty days after the close of each calendar year, transmit or deliver to the Minister a list, certified by the general manager or other principal officer of the bank next in authority in the management of the affairs of the bank at the time at which the list is certified, and by the officer of the bank in charge of the register of shareholders, to be a correct list and in accordance with the books of the bank with regard thereto; and the list shall show—
 - (a) the names of the shareholders of the bank on the last day of such calendar year, with their last known post office addresses and descriptions;

(b) the number of shares then held by them respectively; and,

(c) the amount paid thereon.

9. The Minister shall lay such returns and lists before Parliament at the next session thereof.

53 V., c. 31, ss. 87 and 88; 63-64 V., c. 26, s. 21.

Am.

Sub-sections 1 and 2 were first enacted in 1890. The publication of the first annual returns by Parliament shewed a very large number of unclaimed dividends and balances, most of them being small. Subsequent returns shew that as the result of the publicity given from year to year, very many of the amounts have been claimed and withdrawn.

Sub-section 3 was first enacted in 1900, and in a lesser degree had a like effect.

Schedule F is new, as are also sub-sections 4, 6 and 7.

The lists of shareholders are published each year by Parliament.

By sections 92 and 57 a bank cannot plead any statute of limitations or prescription, with reference to deposits or dividends. In case of a winding-up, such moneys are paid over to the Minister of Finance: sec. 115.

PAYMENTS TO THE MINISTER UPON WINDING UP.

115. Unclaimed moneys.—If, in the event of the winding-up of the business of the bank in insolvency, or under any general winding-up Act, or otherwise, any moneys payable by the liquidator, either to shareholders or depositors, remain unclaimed,—

- (a) for the period of three years from the date of suspension of payment by the bank; or,
- (b) for a like period from the commencement of the winding-up of such business; or,
- (c) until the final winding-up of such business, if the business is finally wound up before the expiration of the said three years;

such moneys and all interest thereon shall, notwithstanding any statute of limitations or other Act relating to prescription, be paid to the Minister, to be held by him subject to all rightful claims on behalf of any person other than the bank.

2. If a claim to any moneys so paid is thereafter established to the satisfaction of the Treasury Board, the Governor in Council shall, on the report of the Treasury Board, direct payment thereof to be made to the person entitled thereto, together with interest on the principal sum thereof, at the rate of three per cent per annum for a period not exceeding six years from the date of payment thereof to the Minister as aforesaid: Provided that no such interest shall be paid or payable on such principal sum unless interest thereon was payable by the bank paying the same to the Minister.
3. Upon payment to the Minister as herein provided, the bank and its assets shall be held to be discharged from further liability for the amounts so paid. 53 V., c. 31, s. 88.

The bank is prevented by sections 97 and 52 from claiming the benefit of a statute of limitations or prescription as to deposits, or dividends left for more than the statutory period. While it continues in business it may have the use of such moneys; but in the event of a winding-up, the money must be paid over to the Minister of Finance.

Sections 125 to 129 inclusive, relate to the winding-up of a bank.

116. Outstanding notes. — Upon the winding-up of a bank in insolvency or under any general winding-up Act, or otherwise, the assignees, liquidators, directors, or other officials in charge of such winding-up shall, before the final distribution of the assets, or within three years from the commencement of the suspension of payment by the bank, whichever shall first happen, pay over to the Minister a sum, out of the assets of the bank, equal to the difference between the amount then outstanding of the notes intended for circulation issued by the bank, together with any interest on such outstanding notes which may have accrued under section 65 of this Act, and the aggregate of the amount at the credit of the bank in the Circulation Fund and the amount (if any) paid to the Minister by the trustees under section 61 of this Act.

2. Upon such payment being made, the bank and its assets shall be relieved from all further liability in respect of such outstanding notes.
3. The sum so paid shall be held by the Minister and applied for the purpose of redeeming,

whenever presented, such outstanding notes, without interest, except such as may have been paid over under this section. 53 V., c. 31, s. 88. Am.

Outstanding notes include not only those actually in circulation, but also any issued that may have been destroyed.

CURATOR.

117. Appointment of curator. — The Association shall, if a bank suspends payment in specie or Dominion notes of any of its liabilities as they accrue, forthwith appoint a curator to supervise the affairs of such bank.

2. The Association may at any time remove the curator, and may appoint another person to act in his stead. 63-64 V., c. 26, s. 24.

The Association is defined by section 2 (*c*) to be the Canadian Bankers' Association incorporated by 63-64 Vict. c. 93. This statute is published in full in the Appendix, as are also the By-laws of the Association. The appointment and removal of a curator are dealt with in By-law No. 14.

As the notes of the suspended bank may become payable out of the Bank Circulation Redemption Fund (sec. 64), all the banks are interested in seeing that the fund is properly administered.

118. The appointment of the curator shall be made in the manner provided for in the by-law of the Association made in that behalf as hereinafter provided.

2. If there is no such by-law the appointment shall be made in writing by the president of the Association, or by the person acting as president. 63-64 V., c. 26, s. 25.

By-law No. 14 of the Association was passed in accordance with this section, and was approved by the Treasury Board in May, 1901. It will be found among the By-laws of the Association in the Appendix. The by-law is similar to sub-section 2 above.

119. Duties of curator.—The curator shall assume supervision of the affairs of the bank, and of all necessary arrangements for the payment of the notes of the bank issued for circulation, and, at the time of his appointment, outstanding and in circulation.

2. The curator shall generally have all powers and shall take all steps and do all things necessary or expedient to protect the rights and interests of the creditors and shareholders of the bank, and to conserve and ensure the proper disposition, according to law, of the assets of the bank; and, for the purposes of this section, he shall have free and full access to all books, accounts, documents and papers of the bank.
3. The curator shall continue to supervise the affairs of the bank until he is removed from office, or until the bank resumes business or until a liquidator is duly appointed to wind up the business of the bank. 63-64 V., c. 26, s. 26.

In the ordinary course the duties of the curator are of a temporary nature. When a liquidator is appointed,

and notice of the payment of the notes of the suspended bank is given as provided by section 65, and such payment is kept up, his duties are practically at an end.

120. Officers to assist.—The president, vice-president, directors, general manager, managers, clerks and officers of the bank shall give and afford to the curator all such information and assistance as he requires in the discharge of his duties. 63-64 V., c. 26, s. 27.

121. Approval necessary.—No by-law, regulation, resolution or act, touching the affairs or management of the bank, passed, made or done by the directors during the time the curator is in charge of the bank, shall be of any force or effect until approved in writing by the curator. 63-64 V., c. 26, s. 27.

The resumption of business by a bank within ninety days after suspension is an exception to the rule laid down in this section. See section 61 (*b*) and the notes thereon; also section 138 (*b*).

122. To make reports.—The curator shall make all returns and reports, and shall give all information to the Minister, touching the affairs of the bank, that the Minister requires of him. 63-64 V., c. 26, s. 28.

123. Remuneration. — The remuneration of the curator for his services, and his expenses and disbursements in connection with the discharge of his duties, shall be fixed and determined by a judge of a superior court in the province where the chief office of the bank is situate, and shall be paid out of the assets of

the bank, and, in case of the winding-up of the bank, shall rank on the estate equally with the remuneration of the liquidator. 63-64 V., c. 26, s. 29.

The Winding-up Act, R. S. C. c. 144, s. 92, makes the remuneration of the liquidator a first claim on the assets of the estate.

Before the late revision the remuneration of the curator was determined by the Bankers' Association.

BY-LAWS OF THE CANADIAN BANKERS' ASSOCIATION.

124. The Association may, at any meeting thereof, with the approval of two-thirds in number of the banks represented at such meeting, if the banks so approving have at least two-thirds in par value of the paid-up capital of the banks so represented, make by-laws, rules and regulations respecting—

- (a) all matters relating to the appointment or removal of the curator, and his powers and duties;
- (b) the supervision of the making of the notes of the banks which are intended for circulation, and the delivery thereof to the banks;
- (c) the inspection of the disposition made by the banks of such notes;
- (d) the destruction of notes of the banks;
- (e) the custody and management of the central gold reserves and the carrying out of the provisions of this Act relating to such reserves; and,

- (f) the imposition of penalties for the breach or non-observance of any by-law, rule or regulation made by virtue of this section.
2. No such by-law, rule or regulation, and no amendment or repeal thereof, shall be of any force or effect until approved by the Treasury Board.
 3. Before any such by-law, rule or regulation, or any amendment or repeal thereof is so approved, the Treasury Board shall submit it to every bank which is not a member of the Association, and give to each such bank an opportunity of being heard before the Treasury Board with respect thereto.
 4. The Association shall have all powers necessary to carry out, or to enforce the carrying out, of any by-law, rule or regulation, or any amendment thereof, so approved by the Treasury Board. 63-64 V., c. 26, ss. 30 and 31.

By-laws Nos. 13, 14, 15 and 16, dealing with the subjects enumerated in this section, to be found among the by-laws of the Canadian Bankers' Association in the Appendix, were passed by the Association and were approved by the Treasury Board in May, 1901, and are still in force.

INSOLVENCY.

125. Double liability.—In the event of the property and assets of the bank being insufficient to pay its debts and liabilities, each shareholder of the bank shall be liable for the deficiency, to an amount equal to the par value of the shares held by him, in addition to any amount not paid up on such shares.

2. "Shareholder," within the meaning of this section, shall include an undisclosed principal and, to the extent of his interest, a *cestui que trust*, on whose behalf or for whose benefit shares in the capital stock of the bank are held. 53 V., c. 31, s. 89. Am.

This liability of each shareholder to pay an amount equal to the par value of the stock held by him is commonly called the double liability. It applies to all the banks now doing business in Canada, except the Bank of British North America: sec. 6.

If after a bank has become insolvent by reason of its suspension for ninety days it has been brought under the Winding-up Act, R. S. C. chap. 144, the extent to which shareholders shall be called upon to pay this double liability will be determined by the liquidator and court in settling the list of contributories. If it has not been brought under the Winding-up Act, then this shall be determined by the directors under section 128, with the approval of the curator.

Where a savings bank holds shares as pledgee, but appears as owner in the books of the bank, it is not a shareholder within the meaning of this section, and not subject to the double liability. The bank is presumed to know that a savings bank cannot acquire bank shares or hold them except as pledgee: *Exchange Bank v. C. & D. Savings Bank*, M. L. R. 6 Q. B. 196 (1887).

A director who has drawn dividends on stock standing in his name cannot set up irregularities in the issue of the stock to him to escape the double liability: *Court v. Waddell*, 4 L. N. 78 (1881).

A person who has accepted the transfer of shares and held them up to the liquidation of the bank cannot escape liability on the ground that the shares had been previously purchased with the money of the bank in violation of section 76: *Re Ontario Bank, Barwick's Case*, 24 O. L. R. 301 (1911).

A loan company which by its charter is authorized to lend money on bank shares, and which advances money on shares transferred to it, and accepted by it in the ordinary absolute form, cannot escape liability on the ground that it is merely a trustee for the borrower: *Re Central Bank, Home Savings & Loan Co.'s Case*, 18 Ont. A. R. 489 (1891).

A director who had acted as such, was placed on the list of contributories for the number of shares required to qualify directors, although, as a fact, no shares had ever been allotted to him, nor had he applied for any: *In re Bread Supply Association*, [1893] W. N. 14.

The second sub-section is new. The extended meaning of shareholder is in harmony with the principle laid down in section 53 as to the liability of the *cestui que trust*. If the agent or the trustee or executor in whose name the stock stands is held personally liable, he may have his recourse over against his principal or *cestui que trust*.

126. What constitutes insolvency.—Any suspension by the bank of payment of any of its liabilities as they accrue, in specie or Dominion notes, shall, if it continues for ninety days consecutively, or at intervals within twelve consecutive months, constitute the bank insolvent, and work a forfeiture of its charter or Act of incorporation, so far as regards all further banking operations. 53 V., c. 31, s. 91; R. S. C. c. 29, s. 127 (1).

When a bank suspends payment, the President of the Canadian Bankers' Association must forthwith appoint a curator: see. 117, and By-law 15 of the Association. The curator takes charge of the affairs of the bank, and does what is necessary to protect the interests of the

creditors and shareholders: sec. 119. The directors, officers, etc., are to give him all the information and assistance he requires: sec. 120; and nothing done or ordered by the directors is to have any force or effect until approved by him in writing: sec. 121.

It would be part of his duty to see that nothing was done, no payment made, and no contract entered into that would constitute a fraudulent preference within the meaning of the Winding-up Act, or be liable to be set aside in case the bank should after suspension for ninety days be brought under the provisions of that Act.

He should also see that no notes of the bank are issued during the suspension in contravention of section 61.

Although section 121 declares that no by-law, resolution or act touching the affairs or management of the bank, passed, made or done by the directors during the time the curator is in charge of the bank shall be of any force or effect until approved in writing by the curator, yet, as pointed out in the notes to section 61, that section assumes that the bank may resume business without such approval, the only restriction being that it shall not issue or re-issue any of its notes until authorized by the Treasury Board so to do.

It is to be noted that the bank is not deemed to be insolvent during the ninety days, nor is its charter forfeited as to further banking operations until the expiration of that period, or unless it has suspended for ninety days within twelve consecutive months. What may be done or allowed by the curator during the suspension will depend largely upon the condition he finds the bank in. If there is a prospect of the bank being able to resume business, or if it is certain that all its creditors will be paid in full, the course adopted during that period will be quite different from that to be adopted if there is a possibility that the liabilities may not be paid in full.

Before the Act of 1890, only a suspension for ninety consecutive days constituted a bank insolvent. The day

on which the bank suspends is reckoned as the first day of the ninety: *Mechanics' Bank v. St. Jean*, 9 R. L. 555 (1879).

A creditor of an incorporated bank, which has suspended payment, may, before the expiration of the ninety days, sue the bank and get judgment for his debt: *Senecal v. Exchange Bank*, M. L. R. 2 S. C. 107 (1884).

A deposit of money made in a bank on the day and at the very hour when it suspended payment may be lawfully returned to the depositor: *Exchange Bank v. Montreal Coffee House*, M. L. R. 2 S. C. 141 (1886).

A deposit made on the day the bank suspended and after the directors had passed a resolution conditionally in favor of suspension was ordered to be returned with interest: *Re Central Bank, Wells' Case*, 15 O. R. 611 (1888).

A fair transaction by a bank after suspension will be upheld: *Exchange Bank v. Stinson*, 8 O. R. 667 (1885).

Where a depositor gave his cheque on a suspended bank to a debtor of the bank, which the bank accepted for the debtor's notes maturing, no action lies against the depositor as he has received nothing from the bank: *Exchange Bank v. Counsell*, 8 O. R. 673 (1885).

A person who deposits in a bank after its suspension cheques of third parties drawn on and accepted by the bank in question is not entitled to be paid by privilege the amount of such deposit: *Ontario Bank v. Chaplin*, M. L. R. 5 Q. B. 407 (1889); affirmed in the Supreme Court, 20 S. C. Can. 152 (1891).

A depositor, five days after the suspension of a bank, drew cheques upon it which were accepted. These he handed to different persons, who some days later got them cashed by the suspended bank. It was held that no action lay against the depositor; the right of action, if any, was against the persons who drew the money: *Exchange Bank v. Hall*, M. L. R. 2 Q. B. 409 (1886).

A bank at Stratford received a deposit of \$1,000 of the Mechanics' Bank bills, and later in the day learned that the Mechanics' Bank had suspended. That evening it forwarded the bills to Montreal, and three days later charged the amount to the depositor. It was held that the bills should have been tendered back the day they were deposited or the next day, and that the bank was liable: *Conn v. Merchants' Bank*, 30 U. C. C. P. 380 (1879).

127. Charter partially in force.—The charter or Act of incorporation of the bank shall, in the case mentioned in the next preceding section, remain in force only for the purpose of enabling the directors, or other lawful authority, to make and enforce the calls mentioned in the next following section of this Act, and to wind up the business of the bank. 53 V., c. 31, s. 91. Am.

If no winding-up proceedings are taken, then the directors will be the lawful authority to make and enforce the calls; if winding-up order is made, the duty will devolve upon the liquidator.

See the notes under the preceding and the succeeding section.

128. Calls after suspension.—If any suspension of payment in full, in specie or Dominion notes, of all or any of the notes or other liabilities of the bank, continues for three months after the expiration of the time which, under the two last preceding sections, would constitute the bank insolvent, and if no proceedings are taken under any Act for the winding-up of the bank, the directors shall make calls on the shareholders thereof, to the amount they

deem necessary to pay all the debts and liabilities of the bank not exceeding the limit of liability of the shareholders hereinbefore specified, without waiting for the collection of any debts due to the bank or the sale of any of its assets or property.

2. Such calls shall be payable at intervals of thirty days.
3. Notice of such calls shall be given to the shareholders.
4. Any number of such calls may be made by one resolution.
5. No such call shall exceed twenty per cent on each share.
6. Payment of such calls may be enforced in like manner as payment of calls on unpaid stock may be enforced.
7. The first of such calls may be made within ten days after the expiration of the said three months.
8. In the event of proceedings being taken, under any Act, for the winding-up of the bank in consequence of the insolvency of the bank, the said calls shall be made in the manner prescribed for the making of such calls in such Act.
9. Any failure on the part of any shareholder liable to any such call to pay the same when due, shall work a forfeiture by such shareholder of all claim in or to any part of the assets of the bank: Provided that such call, and any

further call thereafter, shall nevertheless be recoverable from him as if no such forfeiture had been incurred. 53 V., c. 31, ss. 92, 93 and 94. Am.

The first part of this section provides for a voluntary winding-up by the directors in case proceedings are not taken under a Winding-up Act, after the expiration of the ninety days. In that event the curator appointed under section 118 would remain in charge. The directors and officers of the bank are to give him all the assistance he requires: sec. 120. The calls provided for by the early part of this section and all other proceedings of the directors are to be approved by him in writing before they are acted on: sec. 121.

If no winding-up proceedings are taken within three months after the bank has become insolvent, that is within six months after its suspension, the directors must, within ten days, enforce the double liability so far as necessary. The making of calls is the same as under section 38, except that a call may be for twenty per cent instead of ten.

Sub-section 8 speaks of proceedings being taken "under any Act for the winding-up of the bank." The only Act under which proceedings can be taken for the winding-up of a bank, is the Dominion Winding-up Act, R. S. C. chap. 144, which applies to all corporations under the authority of the Parliament of Canada, except building societies without capital stock, and railway and telegraph companies. Other corporations are deemed insolvent and may be wound up if there has been an acknowledgment of insolvency, an offer to compound, a fraudulent disposal or a general conveyance or assignment of the property of the corporation, or any unsatisfied seizure of its property for fifteen days, or until within four days of the sale: sec. 3. Also if a creditor for over \$200 has made a demand of payment in

writing and it has neglected to pay, or secure or compound for the same for 60 days: sec. 4. Section 4 also provides that if such a demand is made upon a bank and its neglect continues for 90 days, it shall be deemed insolvent. A demand is, however, not necessary in case of a bank, as under the present section suspension for ninety days constitutes insolvency without any demand.

Sections 149 to 159 inclusive of the Act apply to banks alone. The application must be made by a creditor of at least \$1,000. The Court must hold separate meetings of shareholders and creditors to ascertain their respective wishes as to the appointment of liquidators.

If the bank is wound up under the Act the Court settles a list of contributories and the shareholders are ordered to pay such portion of the double liability as may be required to pay the creditors. The Court and liquidators are not subject to the limitations imposed on the directors in the earlier sub-sections with respect to calls.

129. Liabilities of directors.—Nothing in the four sections last preceding shall be construed to alter or diminish the additional liabilities of the directors as herein mentioned and declared.
53 V., c. 31, s. 95.

The additional liabilities of directors referred to in this section are for declaring a dividend or bonus so as to impair the paid-up capital: sec. 58; pledging or hypothecating notes of the bank: sec. 139; making a false statement or return: sec. 153; or giving an undue preference: sec. 155.

130. Liability of ex-shareholders.—(a) Persons who, having been shareholders of the bank, have only transferred their shares, or any of them, to others, as hereinbefore provided,

within sixty days before the commencement of the suspension of payment by the bank; and,

- (b) Persons whose subscriptions to the stock of the bank have been forfeited, in manner hereinbefore provided, within the said period of sixty days before the commencement of the suspension of payment by the bank; shall be liable to all calls on the shares held or subscribed for by them, as if they held such shares at the time of such suspension of payment, saving their recourse against those by whom such shares were then actually held. 53 V., c. 31, s. 96. Am.

In the late revision clause (a) was amended by substituting the words "as hereinbefore provided" for the words "or registered the transfer thereof"; and clause (b) by substituting the word "forfeited" for "cancelled." The first change has reference to section 43, and the second to section 40.

Before 1890 the period of such liability was only a month, and there was no liability on forfeited shares. The liability in question is for the unpaid portion, if any, of the amount subscribed for, transferred or transmitted, and the double liability. This liability exists whether the bank has been brought under the Winding-up Act, or is being wound up by the curator and directors.

If the stock has passed through several hands within the sixty days preceding the suspension, they are all liable; the prior holders having their recourse against those who held the stock subsequent to themselves: *Re Central Bank, Baines' Case*, 16 Ont. A. R. 237 (1889); *Re Central Bank, Henderson's Case*, 17 O. R. 110 (1889); *Humby's Case*, 26 L. T. N. S. 936 (1872).

The owner of certain shares in the Central Bank authorized his broker to sell them, and transferred them to him for that purpose. The latter sold them on the Toronto Stock Exchange to a firm of brokers who did not then disclose the name of their principal. The selling broker signed the transfer in the books of the bank, leaving the name of the transferee blank, but noting in the margin that they were subject to the order of the purchasing brokers. The latter a few days later made another marginal note giving the name of their principal, who accepted the transfer, his name being filled in the blank space as transferee. Within a month (the time limited by section 77 of the then Bank Act, R. S. C. c. 120) from the original transfer to the seller's broker the bank failed. The seller was held for the double liability. He obtained a judgment of indemnity against his broker, which was assigned to him, and the purchasing brokers were in turn held liable to him, their principal being worthless: *Boulton v. Gzowski*, 29 S. C. Can. 54 (1898).

After winding-up proceedings had been begun, but before an order had been made, a transfer of shares of the Ontario Bank was made and registered in the books of the bank. The names of the transferees were by oversight entered alone in the first list of contributories for these shares. Afterwards the name of the transferor was added. It was claimed that there was estoppel. Held, that both were liable, and there was no estoppel. The laches of the liquidator could not accomplish what he had no power to do deliberately and intentionally: *Massey and Lee's Case*, 27 O. L. R. (1912).

131. Order of charges on assets.—In the case of the insolvency of any bank,—

- (a) the payment of the notes issued or re-issued by such bank, intended for circulation, and then in circulation, together with any interest paid or payable thereon as hereinbefore

provided, shall be the first charge upon the assets of the bank;

- (b) the payment of any amount due to the Government of Canada, in trust or otherwise, shall be the second charge upon such assets;
- (c) the payment of any amount due to the government of any of the provinces, in trust or otherwise, shall be the third charge upon such assets; and,
- (d) the amount of any penalties for which the bank is liable shall not form a charge upon the assets of the bank, until all other liabilities are paid. 53 V., c. 31, s. 53.

This section applies to all banks that have suspended payment for ninety days, whether brought under the Winding-up Act, or left in the hands of the curator and directors.

Holders of notes were given a preference in 1880, and the other preferences granted in 1890.

Depositors rank with ordinary creditors between clauses (c) and (d).

In the case of the Bank of Prince Edward Island, which existed under a provincial charter and never came under the Dominion Bank Act, it was held that the Dominion Government as a depositor had a right of priority over note holders and other ordinary creditors: *Reg. v. Bank of Nova Scotia*, 11 S. C. Can. 1 (1885).

In the case of the Exchange Bank, which was under the Bank Act of 1880, and had its head office in Montreal, it was held that the Crown was bound by the provisions of the Quebec codes, which gave the Crown priority only in the case of certain officials accountable for its moneys,

and that as an ordinary creditor of a bank in liquidation the Dominion Government had no priority over the other ordinary creditors: *Exchange Bank v. The Queen*, 11 App. Cas. 157 (1886).

Where by an arrangement with the Dominion Government an insurance company made the deposit of \$50,000 required by the Insurance Act with the Maritime Bank, which was to pay the interest to the company, it was held that this was not the money of the Crown, but was held by the Finance Minister in trust for the company, and was not subject to the prerogative of payment in full in priority to other creditors: *Maritime Bank v. The Queen*, 17 S. C. Can. 657 (1889).

The Provincial Government of New Brunswick had moneys in the Maritime Bank when it failed. The Supreme Court held that under R. S. C. c. 120, s. 79, note-holders had a right of priority over the Government, and that the latter had priority over depositors and simple contract creditors: *Maritime Bank v. Receiver-General*, 20 S. C. Can. 695 (1889). The liquidators of the bank appealed against the latter part of this judgment, but it was affirmed by the Privy Council: [1892] A. C. 437.

The penalties for which the bank may be liable are those laid down in secs. 134, 135, 140A, 141, 142, 145, 146, 147, 147A, 147B, 147C, 148, 149, 150, and 151.

OFFENCES AND PENALTIES.

Payments of Incorporation and Organization Expenses.

- 131A. If prior to the time at which the certificate permitting the bank to issue notes and commence the business of banking has been obtained from the Treasury Board, any provisional director or director authorizes or is a

party to the payment of, or receives, out of moneys paid in by subscribers or interest thereon, any sum for commission, salary or charges for services in connection with or arising out of the incorporation or organization of the bank, it shall be an offence against this Act.

2. If after the certificate has been obtained from the Treasury Board, any director authorizes payment of, or any general manager or other officer of the bank pays or causes to be paid any money for or on account of the incorporation or organization expenses of the bank, except and unless the sum so paid is mentioned or included in the statement submitted to the Treasury Board at the time at which the application is made under this Act to the Board for a certificate permitting the bank to issue notes and commence the business of banking, it shall be an offence against this Act.
3. If no certificate from the Treasury Board has been obtained within the time limited by this Act, it shall be an offence against this Act for any provisional director or director to authorize or be a party to the payment of, or to receive, out of moneys paid in by subscribers, any sum for commission, salary or charges for services in connection with or arising out of the incorporation or organization of the bank, unless provision has been made pursuant to section 16 of this Act for payment. New.

The offences created by this section arise out of the new provisions in sections 15 and 16 respecting the payment of expenses of the incorporation and organization

of new banks. See the notes on the subject under these sections.

An offence against the Act is punishable by a fine not exceeding \$1,000, or by imprisonment for a term not exceeding 5 years, or both: sec. 157.

131B. Every one is guilty of an offence and liable, upon conviction on indictment, to two years' imprisonment or to a fine not exceeding two thousand five hundred dollars, or to both, and, upon summary conviction, to imprisonment for six months, with or without hard labour, or to a fine not exceeding one hundred dollars, or both, who—

- (a) being a director, general manager, manager, or other executive officer of a bank, corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having, after this Act comes into force, done or forborne to do, any act relating to the bank's business or affairs, or for showing or forbearing to show favour or disfavour to any person with relation to the bank's business or affairs; or,
- (b) corruptly gives or agrees to give or offers any gift or consideration to any director, general manager, manager, or other executive officer of a bank as an inducement or reward or consideration to such director, general manager, manager, or other executive officer of the bank, for doing or forbearing to do, or for

having, after this Act comes into force, done or forborne to do any act relating to the bank's business or affairs, or for showing or forbearing to show favour or disfavour to any person with relation to the bank's business or affairs.

2. In this section " consideration " includes valuable consideration of any kind. New.

Commencement of Business.

132. Every director or provisional director of any bank and every other person who, before the obtaining of the certificate from the Treasury Board, by this Act required, permitting the bank to issue notes or commence business, issues or authorizes the issue of any note of such bank, or transacts or authorizes the transaction of any business in connection with such bank, except such as is by this Act authorized to be transacted before the obtaining of such certificate, is guilty of an offence against this Act. 53 V., c. 31, s. 14.

Such certificate may be issued only after \$500,000 have been subscribed, and \$250,000 paid in and deposited with the Minister of Finance, and a meeting of subscribers held and directors elected: secs. 13 and 14.

The punishment for an offence against the Act is a fine not exceeding \$1,000, or imprisonment not exceeding 5 years, or both: sec. 157.

Sale and Transfer of Shares.

133. Any person, whether principal, broker or agent, who wilfully sells or transfers or attempts to sell or transfer—

- (a) any share or shares of the capital stock of any bank by a false number; or,
 - (b) any share or shares of which the person making such sale or transfer, or in whose name or on whose behalf the same is made, is not at the time of such sale, or attempted sale, the registered owner; or,
 - (c) any share or shares, without the assent to such sale of the registered owner thereof;
- is guilty of an offence against this Act. 53 V., c. 31, s. 37.

Such transactions are null and void: sec. 45. The practice of numbering bank shares has not been adopted in Canada.

The punishment for an offence against the Act is laid down in section 157.

Cash Reserves.

- 134.** Every bank which at any time holds in Dominion notes less than forty per cent of the cash reserves which it has in Canada shall incur a penalty of five hundred dollars for each such offence. 53 V., c. 31, s. 50. Am.

The penalty is for a violation of section 60, and is recoverable at the suit of His Majesty: sec. 158.

Issue and Circulation of Notes.

- 135. Penalty for excess.**—If the total amount of the notes of the bank in circulation at any time exceeds the amount authorized by this Act the bank shall,—

- (a) if the amount of such excess is not over one thousand dollars, incur a penalty equal to the amount of such excess; or,
- (b) if the amount of such excess is over one thousand dollars, and not over twenty thousand dollars, incur a penalty of one thousand dollars; or,
- (c) if the amount of such excess is over twenty thousand dollars, and not over one hundred thousand dollars, incur a penalty of ten thousand dollars; or,
- (d) if the amount of such excess is over one hundred thousand dollars, and not over two hundred thousand dollars, incur a penalty of fifty thousand dollars; or,
- (e) if the amount of such excess is over two hundred thousand dollars, incur a penalty of one hundred thousand dollars. 53 V., c. 31, s. 51.

Other banks may issue notes up to the amount of their unimpaired capital, and their contribution to the central gold reserves; the Bank of British North America up to seventy-five per cent of that amount: sec. 61. The penalty is recoverable at the suit of His Majesty: sec. 158.

136. Issuing notes as money.—Every person, except a bank to which this Act applies, who issues or re-issues, makes, draws, or endorses any bill, bond, note, cheque or other instrument, intended to circulate as money, or to be used as a substitute for money, for any amount whatsoever, shall incur a penalty of four hundred dollars.

2. Such penalty shall be recoverable with costs, in any court of competent jurisdiction, by any person who sues for the same.
3. A moiety of such penalty shall belong to the person suing for the same, and the other moiety to His Majesty for the public uses of Canada.
4. If any such instrument is made for the payment of a less sum than twenty dollars, and is payable either in form or in fact to the bearer thereof, or at sight, or on demand, or at less than thirty days thereafter, or is overdue, or is in any way calculated or designed for circulation, or as a substitute for money, the intention to pass the same as money shall be presumed, unless such instrument is—
 - (a) a cheque on some chartered bank paid by the maker directly to his immediate creditor; or,
 - (b) a promissory note, bill of exchange, bond or other undertaking for the payment of money made or delivered by the maker thereof to his immediate creditor; and,
 - (c) not designed to circulate as money or as a substitute for money. 53 V., c. 31, s. 60.

Most of the offences against the Act by individuals are punishable by indictment; the penalty in this section is recoverable in an ordinary *qui tam* action.

The issuing of notes in Canada intended to circulate as money is limited to the Dominion Government and the banks to which this Act applies.

137. Mutilating notes.—Every person who mutilates, cuts, tears or perforates with holes any Dominion or bank note, or who in any way defaces a Dominion or bank note, whether by writing, printing, drawing or stamping thereon, or by attaching or affixing thereto anything in the nature or form of an advertisement shall, on summary conviction, be liable to a penalty not exceeding twenty dollars.

2. Every officer, clerk and servant of a bank who, for the bank, re-issues to the public any bank notes or Dominion notes which have not been disinfected and sterilized in accordance with the regulations made by the Treasury Board under the authority of this Act shall, on the information of any person, on summary conviction, be liable to a penalty not exceeding twenty dollars.
3. In the event of the conviction of any officer, clerk or servant of a bank under this section, the bank shall thereby incur a penalty of fifty dollars. 53 V., c. 31, s. 61. Am.

This section has been recast and extended. Sub-sections 2 and 3 are entirely new. In sub-section 1 the words “who mutilates, cuts, tears or perforates with holes any Dominion or bank note, or” are new, as also the words “on summary conviction.”

As to sub-section 2, see section 72.

The penalty in sub-section 3 is recoverable from the bank at the suit of His Majesty: sec. 158.

138. Issuing notes during suspension.—(a) Every person who, being president, vice-president, director, general manager, manager, clerk or other officer of the bank, issues or re-issues, during any period of suspension of payment by the bank of its liabilities, any notes of the bank payable to bearer on demand, and intended for circulation, or authorizes or is concerned in any such issue or re-issue; and,

(b) if, after any such suspension, the bank resumes business without the consent in writing of the curator, hereinbefore provided for, every person who being president, vice-president, director, general manager, manager, clerk or other officer of the bank issues or re-issues, or authorizes or is concerned in the issue or re-issue of any such notes before being thereunto authorized by the Treasury Board; and,

(c) every person who accepts, receives or takes, or authorizes or is concerned in, the acceptance, receipt or taking of any such notes, knowing the same to have been so issued or re-issued, from the bank, or from such president, vice-president, director, general manager, manager, clerk or other officer of the bank in payment or part payment, or as security for the payment of any amount due or owing to such person by the bank;

is guilty of an indictable offence, and liable to imprisonment for a term not exceeding

seven years, or to a fine not exceeding two thousand dollars, or to both. 63-64 V., c. 26, s. 10.

In this and in several subsequent sections the words “ president, vice-president, director, general manager, manager, or other officer of the bank ” are used. In a prosecution under any of these sections it would be sufficient to prove that the person charged performed the duties of one or more of these officers, that he was an officer *de facto*, and it would be no defence for him to shew that he was not such *de jure*: *Gibson v. Barton*, L. R. 10 Q. B. 329 (1875).

The punishment is for a violation of section 61.

139. Pledging notes. — (a) Every person who, being the president, vice-president, director, general manager, manager, clerk or other officer of the bank, pledges, assigns, or hypothecates, or authorizes, or is concerned in the pledge, assignment or hypothecation of the notes of the bank; and,

(b) every person who accepts, receives or takes, or authorizes or is concerned in the acceptance or receipt or taking of such notes as a pledge, assignment or hypothecation;

shall be liable to a fine of not less than four hundred dollars and not more than two thousand dollars, or to imprisonment for not more than two years, or to both. 53 V., c. 31, s. 52.

By section 63 a bank is prohibited from pledging its notes, and no advance or loan thereon is recoverable from the bank or its assets.

140. Issuing notes fraudulently.—(a) Every person who, being the president, vice-president, director, general manager, manager, clerk or

other officer of a bank, with intent to defraud, issues or delivers, or authorizes or is concerned in the issue or delivery of notes of the bank intended for circulation and not then in circulation; and,

- (b) every person who, with knowledge of such intent, accepts, receives or takes, or authorizes or is concerned in the acceptance, receipt or taking of such notes;

shall be guilty of an indictable offence, and liable to imprisonment for a term not exceeding seven years, or to a fine not exceeding two thousand dollars, or to both. 53 V., c. 31, s. 52.

A violation of section 63 is punishable under this section.

Annual Statement and Auditors' Report.

140A. Fine for not attaching.—If any copy of the statement or of the profit and loss account submitted under section 54 of this Act, which has not been signed as required by that section, is issued, circulated or published, or if any copy of such statement is issued, circulated or published without having a copy of the auditors' report attached thereto, the bank, and every director, general manager or other officer of the bank who is knowingly a party to the default, shall be liable to a fine not exceeding two hundred and fifty dollars. New.

This section was added in the late revision. Although the word "fine" is used, it is probable that the recovery would be under section 158 relating to penalties.

Warehouse Receipts, Bills of Lading and other Securities.

In the revised Act of 1906 the following sections, 141, 142, 143 and 144, were inserted by the revisors to take the place of section 79 in the Act of 1890, which read as follows: " Every bank which violates any provisions contained in any of the sections numbered sixty-four to seventy-eight (both inclusive) shall incur for each violation thereof a penalty not exceeding five hundred dollars." The sections named are those that relate to the business and powers of banks, and correspond generally to sections 76 to 90 inclusive of the present Act. These sections have been amended so as to conform to and cover the changes made in sections 88, 89 and 90.

141. Acquiring contrary to Act.—If any bank, to secure the payment of any bill, note, debt or liability, acquires or holds—

- (a) any warehouse receipt or bill of lading; or,
- (b) any instrument such as is by this Act authorized to be taken by the bank to secure money lent,—
 - (i) to any wholesale purchaser, or shipper of or dealer in products of agriculture, the forest, quarry and mine, or the sea, lakes and rivers, or to any wholesale purchaser or shipper of or dealer in live or dead stock, and the products thereof, upon the security of such products, or of such live or dead stock, or the products thereof;
 - (ii) to any person engaged in business as a wholesale manufacturer of any goods, wares and merchandise upon the security of the goods,

wares and merchandise manufactured by such person, or procured for such manufacture; or,
(iii) to any farmer upon the security of threshed grain:

such bank shall, unless—

- (a) such bill, note, debt or liability is negotiated or contracted at the time of the acquisition by the bank of such warehouse receipt, bill of lading or security; or,
- (b) such bill, note, debt or liability is negotiated or contracted upon the written promise or agreement that such warehouse receipt, bill of lading or security would be given to the bank; or,
- (c) the acquisition or holding by the bank of such warehouse receipt, bill of lading or security is otherwise authorized by this Act;

incur a penalty not exceeding five hundred dollars. 53 V., c. 31, s. 79.

It will be seen that the bank incurs the penalty unless it acquires the warehouse receipt, bill of lading or security in accordance with the provisions of this Act. It cannot claim the right to do so under any other law—Dominion or Provincial. See especially sections 86 to 90.

The penalty is recoverable by action at the suit of His Majesty: sec. 158.

142. Selling under power of sale.—If any debt or liability to the bank is secured by—

- (a) any warehouse receipt or bill of lading; or,
- (b) any other security such as is mentioned in the last preceding section;

and is not paid at maturity, such bank shall, if it sells the products or stock, goods, wares and merchandise or grain covered by such warehouse receipt, bill of lading or security, under the power of sale conferred upon it by this Act, without complying with the provisions to which the exercise of such power of sale is, by this Act, made subject, incur a penalty not exceeding five hundred dollars. 53 V., c. 31, s. 79; 63-64 V., c. 26, s. 18.

Section 89 contains the provisions as to such sales.

The penalty is recoverable by action at the suit of His Majesty: sec. 158.

143. Making false statement.—Every person is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years who wilfully makes any false statement—

- (a) in any warehouse receipt or bill of lading given under the authority of this Act to any bank; or,
- (b) in any instrument given to any bank under the authority of this Act, as security for any loan of money made by the bank to any wholesale purchaser or shipper of or dealer in products of agriculture, the forest, quarry and mine, or the sea, lakes and rivers, or of any wholesale purchaser, or shipper of or dealer in live or dead stock or the products thereof, whereby any such products or stock is assigned or transferred to the bank as security for the payment of such loan; or,

- (c) in any instrument given to any bank under the authority of this Act, as security for any loan of money made by the bank to any person engaged in business as a wholesale manufacturer of any goods, wares and merchandise, whereby any of the goods, wares and merchandise manufactured by him, or procured for such manufacture, are transferred or assigned to the bank as security for the payment of such loan; or,
- (d) in any instrument given to any bank under the authority of this Act as security for any loan of money made by the bank to a farmer whereby any grain is transferred or assigned to the bank as security for the payment of such loan. 53 V., c. 31, s. 75. Am.

The Criminal Code, section 425, provides that any warehouseman, forwarder, etc., who gives a false warehouse or shipping receipt is guilty of an indictable offence and liable to three years' imprisonment, as is also any person who knowingly and wilfully accepts, transmits or uses any such false receipt. Section 427 makes any person liable to the same punishment who wilfully makes any false statement in any receipt, certificate or acknowledgment for grain, timber or other goods or property which can be used for any of the purposes of the Bank Act.

The present Act virtually amends the Criminal Code by reducing the maximum term of imprisonment from three to two years, where the instrument is given under the authority of the Bank Act.

144. Depriving bank of pledged goods.—Every person who, having possession or control of any products or stock, goods, wares and merchandise, or grain covered by any warehouse

receipt or bill of lading or by any such security as in the last preceding section mentioned, and having knowledge of such receipt, bill of lading or security, without the consent of the bank in writing, and before the advance, bill, note, debt or liability thereby secured has been fully paid,—

- (a) wilfully alienates or parts with any such products or stock, goods, wares or merchandise, or grain; or,
- (b) wilfully withholds from the bank possession of any such products or stock, goods, wares and merchandise, or grain, upon demand, after default in payment of such advance, bill, note, debt or liability;

is guilty of an indictable offence, and liable to imprisonment for a term not exceeding two years. 53 V., c. 31, s. 75; 63-64 V., c. 26, s. 18. Am.

See Criminal Code, sec. 426. This section amends the Criminal Code by reducing the maximum term of imprisonment from three to two years when the instrument is given under the authority of the Bank Act.

145. Sale of pledged shares.—(a) If any bank having, by virtue of the provisions of this Act, a privileged lien for any debt or liability for any debt to the bank, on the shares of its own capital stock of the debtor or person liable, neglects to sell such shares within twelve months after such debt or liability has accrued and become payable; or,

- (b) If any such bank sells any such shares without giving notice to the holder thereof of the intention of the bank to sell the same, by mailing such notice in the post office, post paid, to the last known address of such holder, at least thirty days prior to such sale;

such bank shall incur, for each such offence, a penalty not exceeding five hundred dollars. 53 V., c. 31, s. 79.

The above penalty is for a violation of section 77. It is recoverable by action at the suit of His Majesty: sec. 158.

Prohibited Business.

146. Violating section 76.—If any bank, except as authorized by this Act, either directly or indirectly—

- (a) deals in the buying or selling or bartering of goods, wares and merchandise, or engages or is engaged in any trade or business whatsoever; or,
- (b) purchases, deals in, or lends money or makes advances upon the security or pledge of any share of its own capital stock, or of the capital stock of any bank; or,
- (c) lends money or makes advances upon the security, mortgage or hypothecation of any lands, tenements or immovable property, or of any ships or other vessels, or upon the security of any goods, wares and merchandise;

such bank shall incur a penalty not exceeding five hundred dollars. 53 V., c. 31, s. 79.

The above penalty is for a violation of section 76, and is recoverable by action at the suit of His Majesty: sec. 158.

146A. Pledging bank notes.—It shall be an offence against this Act for any director, officer, clerk or servant of the bank to pledge, assign or hypothecate the notes of the bank on behalf of the bank. New.

A violation of section 63 and punishable under section 157.

146B. Paying debts during suspension.—If a bank suspends payment in specie or Dominion notes of any of its liabilities as they accrue, then, so long as such suspension continues, it shall be an offence against this Act for any director, officer, clerk or servant of the bank who has knowledge of such suspension to pay or cause to be paid to any person any debt or liability of the bank unless with the consent of a curator or liquidator duly appointed. New.

Punishable under section 157.

Returns.

147. Not making monthly.—Every bank which neglects to make up and send to the Minister, within the first twenty days of any month, any monthly return by this Act required to be made up and sent in within the said twenty days, exhibiting the condition of the bank on the last juridical day of the month last preceding, and signed in the manner and by the persons by this Act required, shall incur a

penalty of fifty dollars for each and every day, after the expiration of such time, during which the bank neglects to make and send in such return. 53 V., c. 31, s. 85. Am.

This return is required by section 112, and the penalty is recoverable under section 158.

147A. Excessive issue. — Every bank which neglects to make and send to the Minister, within the first thirty days after the last day of the month in which any amount of its notes in excess of the amount of the unimpaired paid-up capital of the bank has been issued or is outstanding, a return showing the amount of its notes in circulation for each juridical day during such month, and signed in the manner and by the persons by this Act required, shall incur a penalty of fifty dollars for each and every day, after the expiration of such time, during which the bank neglects to make and send in such return. 7-8 E. VII., c. 7, s. 2. Am.

This return is required by section 61, sub-section 17, and the penalty is recoverable under section 158.

147B. Real estate of bank.—Every bank which neglects to make and send to the Minister during the month of January in each year a return showing in detail the fair market value of its real and immovable property held under section 79 of this Act, shall incur a penalty of fifty dollars for each and every day, after the expiration of such time, during which the bank neglects to make and send in such return.

This return is required by section 79, and the penalty is recoverable under section 158.

147C. Interest rates.—Every bank which neglects to make and send to the Minister a quarterly return as of the last juridical day of the months of March, June, September and December in each year, giving such particulars as may be prescribed by regulations made by the Treasury Board of the interest and discount rates charged by the bank, such returns to be made up and sent in within the first thirty days after the respective juridical days aforesaid, and signed by the persons by this Act required, shall incur a penalty of fifty dollars for each and every day, after the expiration of such time, during which the bank neglects to make and send in such return.

This return is required by section 91, and the penalty is recoverable under section 158.

148. Special returns.—Every bank which neglects to make and send to the Minister, within thirty days from the date of the demand therefor by the Minister, or, if such time is extended by the Minister, within such extended time, not exceeding thirty days, as the Minister may allow, any special return, signed in the manner and by the persons by this Act required, which under the provisions of this Act, the Minister may, for the purpose of affording a full and complete knowledge of the condition of the bank, call for, shall incur a penalty of five hundred dollars for each and

every day during which such neglect continues. 53 V., c. 31, s. 86.

These returns are required by section 113, and the penalty is recoverable under section 158.

149. Unpaid certified cheques. — Every bank which neglects to transmit or deliver to the Minister, within twenty days after the close of any calendar year, a return, signed in the manner and by the persons and setting forth the particulars by this Act required in that behalf, of all certified cheques, drafts or bills of exchange issued by the bank to any person and remaining unpaid for more than five years prior to the date of such return, shall incur a penalty of fifty dollars for each and every day during which such neglect continues. 63-64 V., c. 26, s. 21.

This return is required by section 114, sub-section 3, and the penalty is recoverable under section 158.

150. Annual list of shareholders.—Every bank which neglects to transmit or deliver to the Minister, within twenty days after the close of any calendar year, a certified list, as by this Act required, showing—

- (a) the names of the shareholders of the bank on the last day of such calendar year, with their last known post office addresses and descriptions;
- (b) the number of shares then held by such shareholders respectively; and,
- (c) the amount paid thereon,

shall incur a penalty of fifty dollars for each and every day during which such neglect continues. 53 V., c. 31, s. 87. Am.

This return is required by section 114, sub-section 8, and the penalty is recoverable under section 158.

151. List of unpaid dividends.—Every bank which neglects to transmit or deliver to the Minister, within twenty days after the close of any calendar year, a return, signed in the manner and by the persons by this Act required, of all dividends which have remained unpaid for more than five years, and also of all amounts or balances in respect of which no transactions have taken place, or upon which no interest has been paid, during the five years prior to the date of such return, and also of all certified cheques, drafts or bills of exchange issued by the bank and remaining unpaid for more than five years prior to the date of such return, as required by the provisions of this Act in the several cases respectively mentioned, shall incur a penalty of fifty dollars for each and every day during which such neglect continues.

2. The said term of five years shall, in case of moneys deposited for a fixed period, be reckoned from the date of the termination of such fixed period. 53 V., c. 31, s. 88.

This return is required by section 114, sub-section 1, and the penalty is recoverable by section 158.

152. Date stamp on envelope.—If any return or list, mentioned in either of the last eight preceding sections, is transmitted by post, the

date appearing, by the post office stamp or mark upon the envelope or wrapper inclosing the return or list received by the Minister, as the date of deposit in the post office of the place at which the chief office of the bank was situated, shall be taken *prima facie*, for the purpose of any of the said sections, to be the day upon which such return or list was transmitted to the Minister. 53 V., c. 31, ss. 85 and 86; 63-64 V., c. 26, s. 22. Am.

153. Wilfully false statement.—(a) The making of any wilfully false or deceptive statement in any account, statement, return, report or other document respecting the affairs of the bank; or,

(b) the using of any false or deceptive statement in any account, statement, return, report or other document respecting the affairs of the bank with intent to deceive or mislead any person,

is an indictable offence punishable, unless a greater punishment is in any case by law prescribed therefor, by imprisonment for a term not exceeding five years.

2. Every president, vice-president, director, auditor, general manager or other officer of the bank or trustee who negligently prepares, signs, approves or concurs in any account, statement, return, report or document respecting the affairs of the bank containing any false or deceptive statement, shall be guilty of

an indictable offence punishable, unless a greater punishment is in any case by law prescribed therefor, by imprisonment for a term not exceeding three years. 53 V., c. 31, s. 99. Am.

The words "the using" in clause (b) are new; as also the words "or trustee who negligently and respecting the affairs of the bank" in sub-section 2. The maximum term of imprisonment has been lowered from five years to three years.

This section has come down to us without very material change from the Act of 1871. It has been claimed that under the second sub-section the simple signing, approving or concurring in the false statement by the officers named, without their actually knowing it was a false statement, is sufficient to make them liable to the punishment named in the first sub-section, and that a *mens rea* is not a necessary ingredient of the offence. Our Courts, however, do not appear to have adopted this construction of the section.

A reference to Schedule D shews that the statements made by the officers named in the monthly returns under section 112 are only declared to be correct "to the best of our knowledge and belief."

Complaints under this section, as a rule, either come under the statement submitted by the directors at the annual meeting: sec. 54; or under the monthly returns to the Government: sec. 112.

In an indictment under this section in the Act of 1871 for having unlawfully and wilfully made a wilfully false and deceptive statement in a return respecting the affairs of the bank, it was held not necessary to allege that the return was one required by law to be made by the accused, or that any use was made by him of such return, or to specify in what particulars it was false.

The enumeration in the indictment of several alleged false statements constitute but one count, and a general verdict is sufficient if the statement is shewn to be false in any one of the particulars alleged. It is not necessary to allege in the indictment that the false statement was made with intent to deceive or mislead: *The Queen v. Cotté*, 22 L. C. J. 141 (1877).

Where the Judge charged the jury that wilful intent to make a false return might be inferred from all the circumstances of the case proved to their satisfaction, this was held to be a proper instruction: *Reg v. Hincks*, 24 L. C. J. 116 (1879).

It is not necessary that the information should be laid by a shareholder or creditor of the bank; it may be done by any citizen, even though he is a debtor of the bank: *Molleur v. Loupret*, 8 L. N. 305 (1885); *Rex v. Nesbitt*, 28 O. L. R. 91 (1913).

The annual report of the bank submitted to the shareholders is a statement within the meaning of the section not only to them but to the public, and if shewn that it was made with intent that it be acted upon, directors may be liable to third parties: *Rhodes v. Starnes*, 22 L. C. J. 113 (1878).

An indictment is sufficient in form if it charges in substance the offence created by the Act. A charge that the accused made a "wilful, false and deceptive statement of and concerning the affairs of the bank," sufficiently charges an offence under section 99 of the Bank Act, 1890: *The Queen v. Weir*, Q. R. 8 Q. B. 521 (1899); 3 Can. Cr. Cas. 102.

Directors may be held personally responsible for losses incurred through a statement which they know to be untrue, or where they are guilty of such gross negligence as to amount to fraud: *Parker v. McQuesten*, 32 U. C. Q. B. 273 (1872); *McDonald v. Rankin*, M. L. R. 7 S. C. 44 (1890).

An innocent director, however, is not liable for the fraud of his co-directors in issuing to the shareholders false and fraudulent reports and balance sheets, if the books and accounts have been kept and audited by duly appointed and responsible officers, and he has no ground for suspecting fraud: *In re Denham & Co.*, 25 Ch. D. 752 (1883).

Where the collapse of a bank was due to overdrafts which the cashier, the principal executive officer of the bank under the directors, whose accounts had been audited, duly appointed and entirely independent of the directors, had irregularly and improperly allowed to certain customers, it was held that by the law of Quebec as by the law of England, a charge of negligence could not be established against the president of the bank simply by reason of his having in good faith failed to detect the cashier's concealment of such overdrafts. *Dovey v. Cory* (1901), A. C., followed: *Prefontaine v. Grenier* (1907), A. C. 101.

In the same case in the Court of Appeal, Quebec, Q. R. 15 K. B. 143 (1906), it was held that the signing of the statements by the president when he had no reason to suspect they were inaccurate or false did not amount to the making or approval of wilfully false statements under section 99 of the Bank Act, 1890.

In the *King v. Lovitt*, 41 N. S. 240 (1907), 3 Eastern L. R. 384, it was held by two Judges that there was no guilty knowledge on the part of the defendant as president of the falsity of the returns to the government signed by him, and that the case should have been withdrawn from the jury. Two others were in favour of a new trial on account of misdirection in the charge; while the fifth Judge, who thought there was no evidence to warrant a conviction, joined in a judgment ordering a new trial.

The defendant was extradited from the United States charged with "fraud by a banker" under R. S. C. c.

155, First Schedule (9). Held that this referred to the kinds of fraud set out in the Criminal Code by secs. 412 *et seq.*, and not to this section of the Bank Act, and that the charges were not identical. The indictments were accordingly quashed: *Rex v. Nesbitt*, 28 O. L. R. 91 (1913).

Calls in the case of Suspension of Payment.

154. Not making calls.—(a) If any suspension or payment in full, in specie or Dominion notes, of all or any of the notes or other liabilities of the bank continues for three months after the expiration of the time which, under the provisions of this Act, would constitute the bank insolvent; and,

(b) if no proceedings are taken under any Act for the winding-up of the bank; and,

(c) if any director of the bank refuses to make or enforce, or to concur in the making or enforcing of any call on the shareholders of the bank, to any amount which the directors deem necessary to pay all the debts and liabilities of the bank;

such director shall be guilty of an indictable offence, and liable—

(a) to imprisonment for any term not exceeding two years; and,

(b) personally for any damages suffered by any such default. 53 V., c. 31, s. 92.

The duty of making such calls is set out in section 128.

Undue Preference to the Bank's Creditors.

155. Indictable offence.—Every person who, being the president, vice-president, director, general manager, manager, or other officer of the bank, wilfully gives or concurs in giving to any creditor of the bank any fraudulent, undue or unfair preference over other creditors, by giving security to such creditor, or by changing the nature of his claim, or otherwise howsoever, is guilty of an indictable offence, and liable—

- (a) to imprisonment for a term not exceeding two years; and,
- (b) for all damages sustained by any person in consequence of such preference. 53 V., c. 31, s. 97. Am.

The only change in this section is in adding “ general manager ” and omitting “ cashier ” from the list of officers named.

A director of the Exchange Bank had at the time of its suspension over \$13,000 standing to his credit. A few days after the suspension the president of the bank paid him sums aggregating \$10,000. A creditor laid an information against the director, who returned the money. He was, however, convicted and sentenced to ten days' imprisonment: *Reg v. Buntin*, 7 L. N. 395 (1883).

One way of giving a preference would be to give bills of the bank to an ordinary creditor so that he might rank as a preferred creditor.

Use of the Title “ Bank,” etc.

156. An offence.—Every person using the word “ bank,” or the words “ savings bank,”

“banking company,” “banking house,” “banking association,” or “banking institution,” or any word or words of import equivalent thereto in any foreign language, in a sign or in an advertisement, or in a title to represent or describe his business or any part of his business without being authorized so to do by this Act, or by some other Act in force in that behalf, is guilty of an offence against this Act.

2. Every person who uses in a sign or in an advertisement or in a title to represent or describe his business words in a foreign language of import equivalent to the word “banker,” or equivalent to the words “private banker,” without being authorized so to do by this Act or by some other Act in force in that behalf, is guilty of an offence against this Act. 53 V., c. 31, s. 100. Am.

Sub-section 2 is new.

Up to the 1st of July, 1880, any person was at liberty to use the word “bank,” or any of the expressions mentioned in this section. It was enacted by 43 Vict. ch. 22, sec. 10, that any one who used the word “bank” after that date without being authorized to do so, should be guilty of a misdemeanour. The Act of 1883, 46 Vict. chap. 8, added the other expressions of this section, and required the addition of the words “not incorporated.” In the present Act the use of the words is absolutely forbidden, even when translated into a foreign language.

The punishment for a violation of this section is a fine not exceeding \$1,000, or imprisonment not exceeding five years, or both: sec. 157.

In accordance with the provisions of the Interpretation Act, R. S. C. ch. 1, sec. 7 "person" would include a body corporate or a partnership.

Penalty for Offence against this Act.

157. Every person committing an offence, declared to be an offence against this Act, shall be liable to a fine not exceeding one thousand dollars, or to imprisonment for a term not exceeding five years, or to both, in the discretion of the Court before which the conviction is had. 53 V., c. 31, s. 101.

The "offences" against the Act are: (1) Improper payment of incorporation or organization expenses: sec. 131A; (2) Commencing business without a certificate: sec. 132; (3) Selling shares by a false number, or as belonging to one not the owner: sec. 133; (4) Pledging notes on behalf of the bank: sec. 146A; (5) Paying liabilities after suspension: sec. 146B; (6) Using unlawfully the title "bank," etc.: sec. 156.

PROCEDURE.

158. **Recovery of penalties.**—The amount of all penalties imposed upon a bank or person for any violation of this Act shall, unless otherwise provided by this Act, be recoverable and enforceable, with costs, at the suit of His Majesty instituted by the Attorney-General of Canada, or by the Minister.

2. Such penalties shall, unless otherwise provided by this Act, belong to the Crown for the public uses of Canada: Provided that the Governor in Council, on the report of the Treasury

Board, may direct that any portion of any penalty be remitted, or paid to any person, or applied in any manner deemed best adapted to attain the objects of this Act, and to secure the due administration thereof. 53 V., c. 31, s. 98. Am.

In the case of insolvency these penalties are not a charge on the assets of the bank, until all other liabilities are paid: sec. 131.

As will be seen from the several sections in which these penalties are imposed, they are recoverable from the bank in the first instance. As in every case it would be for the neglect of a director or officer of the bank, it would have its recourse against the officer or officers in default.

The directors of banks are quasi trustees for the general body of stockholders, and if any loss should accrue to the bank through their violating the provisions of the Act, they would be liable individually to make good the loss to the bank: *Drake v. Bank of Toronto*, 9 Grant 116 (1862).

REPEAL.

159. Chapter 29 of the Revised Statutes, 1906, and chapter 5 of the statutes of 1912, are repealed.

COMMENCEMENT OF ACT.

160. This Act shall come into force on the first day of July, one thousand nine hundred and thirteen.

SCHEDULES.

SCHEDULE A.

(SEE SECTION 3.)

<i>Name of Bank.</i>	<i>Chief Office of Bank.</i>
1. The Bank of Montreal.....	Montreal.
2. The Quebec Bank	Quebec.
3. The Bank of Nova Scotia	Halifax.
4. The Bank of Toronto.....	Toronto.
5. The Molsons Bank.....	Montreal.
6. La Banque Nationale.....	Quebec.
7. The Merchants Bank of Canada.....	Montreal.
8. La Banque Provinciale du Canada....	Montreal.
9. The Union Bank of Canada.....	Winnipeg.
10. The Canadian Bank of Commerce....	Toronto.
11. The Royal Bank of Canada.....	Montreal.
12. The Dominion Bank.....	Toronto.
13. The Bank of Hamilton.....	Hamilton.
14. The Standard Bank of Canada.....	Toronto.
15. La Banque d'Hochelaga.....	Montreal.
16. The Bank of Ottawa.....	Ottawa.
17. The Imperial Bank of Canada.....	Toronto.
18. The Sovereign Bank.....	Toronto.
19. The Metropolitan Bank.....	Toronto.
20. The Home Bank of Canada.....	Toronto.
21. The Northern Crown Bank.....	Winnipeg.
22. The Sterling Bank of Canada.....	Toronto.
23. The Bank of Vancouver.....	Vancouver.
24. The Weyburn Security Bank.....	Weyburn.

SCHEDULE B.

(SEE SECTION 9.)

An Act to incorporate the ——— Bank.

Whereas the persons hereinafter named have by their petition prayed that it be enacted as hereinafter set forth, and it is expedient to grant the prayer of the said petition: Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. [*Insert names of those applying for incorporation; the full name, address and description of each director must be given*], together with such persons as become shareholders in the corporation by this Act created, are incorporated under the name of [*insert name of bank*] hereinafter called “the Bank.”

2. The persons named in section 1 of this Act shall be the provisional directors of the Bank.

3. The capital stock of the Bank shall be ———dollars.

4. The chief office of the Bank shall be at ———.

5. This Act shall, subject to the provisions of section 16 of The Bank Act, remain in force until the first day of July, in the year one thousand nine hundred and twenty-three.

53 V., c. 31, Sch. B.; 63-64 V., c. 26, s. 45. Am.

SCHEDULE C.

(SEE SECTION 88.)

In consideration of an advance of _____ dollars made by the _____ Bank to A. B., for which the said Bank holds the following bills or notes: (*describe the bills or notes, if any*), [*or, in consideration of the discounting of the following bills or notes by the _____ Bank for A. B.; (describe the bills or notes),*] the products of agriculture, the forest, quarry and mine, [*or, the sea, lakes and rivers, or, the live stock or dead stock, or, the products thereof, or the goods, wares and merchandise, or, the grain, (as the case may be),*] mentioned below are hereby assigned to the said Bank as security for the payment on or before the _____ day of _____ of the said advance, together with interest thereon at the rate of _____ per cent. per annum from the _____ day of _____ [*or, of the said bills or notes, or renewals thereof, or substitutions therefor, and interest thereon, or as the case may be*].

This security is given under the provisions of section eighty-eight of The Bank Act, and is subject to the provisions of the said Act.

The said products of agriculture, the forest, quarry and mine, [*or, the sea, lakes and rivers, or, the live stock or dead stock, or the products thereof, or, the goods, wares and merchandise, or, the grain (as the case may be),*] are now owned by _____, and are now in the possession of _____, and are free from any mortgage, lien or charge thereon (*or as the case may be*), and are in (*place or places where the goods are*), and are the following (*description of property assigned*).

Dated, etc.

(*N.B.—The bills or notes and the property assigned may be set out in schedules annexed.*)

63-64 V., c. 26, s. 46 and Sch. C. Am.

SCHEDULE D.

(SEE SECTION 112.)

Return of the liabilities and assets of the _____
 Bank on the _____ day of _____, 19—.

Capital authorized\$
 Capital subscribed
 Capital paid up
 Amount of rest or reserve fund
 Rate per cent of last dividend declared..—per cent.

Liabilities.

1. Notes in circulation\$
2. Balance due to Dominion Government
 after deducting advances for credits,
 pay-lists, etc.
3. Balances due to provincial governments..
4. Deposits by the public, payable on de-
 mand in Canada
5. Deposits by the public, payable after
 notice or on a fixed day, in Canada...
6. Deposits elsewhere than in Canada.....
7. Loans from other banks in Canada,
 secured, including bills re-discounted..
8. Deposits made by and balances due to
 other banks in Canada.....
9. Due to banks and banking correspondents
 in the United Kingdom.....
10. Due to banks and banking correspondents
 elsewhere than in Canada and the
 United Kingdom
11. Bills payable
12. Acceptances under letters of credit
13. Liabilities not included under foregoing
 heads

 \$

Assets.

1. Current gold and sub-
 sidiary coin { In Canada \$ } \$
 { Elsewhere \$ }
2. Dominion notes { In Canada \$ } \$
 { Elsewhere \$ }
3. Deposit with the Minister of Finance for
 the security of note circulation
4. Deposit in the central gold reserves.....
5. Notes of other banks.....
6. Cheques on other banks.....
7. Loans to other banks in Canada, secured,
 including bills re-discounted.....
8. Deposits made with and balances due from
 other banks in Canada.....
9. Due from banks and banking correspon-
 dents in the United Kingdom.....
10. Due from banks and banking correspon-
 dents, elsewhere than in Canada and the
 United Kingdom
11. Dominion government and provincial
 government securities
12. Canadian municipal securities and Brit-
 ish, foreign and colonial public securi-
 ties other than Canadian
13. Railway and other bonds, debentures and
 stocks
14. Call and short (not exceeding thirty days)
 loans in Canada on stocks, debentures
 and bonds
15. Call and short (not exceeding thirty days)
 loans elsewhere than in Canada.....
16. Other current loans and discounts in
 Canada
17. Other current loans and discounts else-
 where than in Canada.....
18. Loans to the Government of Canada.....
19. Loans to provincial governments.....
20. Loans to cities, towns, municipalities and
 school districts

21. Over due debts	\$
22. Real estate other than bank premises....	
23. Mortgages on real estate sold by the bank	
24. Bank premises, at not more than cost, less amounts (if any) written off.....	
25. Liabilities of customers under letters of credit as per contra.....	
26. Other assets not included under the fore- going heads	
	<hr/>
	\$

Aggregate amount of loans to directors, and firms of which they are partners, \$———

Average amount of current gold and subsidiary coin held during the month, \$———

Average amount of Dominion notes held during the month, \$———

Greatest amount of notes in circulation at any time during the month, \$———

Branch and agency returns included in the foregoing and antedating the last juridical day of the month aforesaid are as follows:—

<i>Branch or Agency.</i>	<i>Date of such return.</i>
--------------------------	-----------------------------

I declare that the above return has been prepared under my directions and is correct according to the books of the bank.

E. F.,
Chief Accountant, (or Acting Chief
Accountant, as the case may be).

We declare that the foregoing return is made up from the books of the bank, and that to the best of our knowledge and belief it is correct, and shows truly and clearly

the financial position of the bank; and we further declare that the bank has never, at any time during the period to which the said return relates, held in Dominion notes less than forty per cent of the cash reserves which it has in Canada.

(Place) ————— this ——— day of ———, 19—.

A. B.,
President, (Vice-President, *or* Director acting as President, *as the case may be*).

C. D.,
General Manager, (*or other principal officer, as the case may be*).

63-64 V., c. 26, s. 47, and Sch. D. Am.

SCHEDULE E.

(SEE SECTION 61, SUB-SECTION 17.)

Return of the ————— Bank ————— showing
the amount of its notes in circulation for each juridical
day during the month of —————, 19—.

<i>Day of the Month.</i>	<i>Paid-up Capital.</i>	<i>*Reserve Fund.</i>	<i>Deposit Gold Coin and Dominion Notes.</i>	<i>Circulation.</i>	<i>Excess (if any).</i>

** N. B.—Returns for the months of March to August, inclusive, need not have the Reserve Fund Column.*

I declare that the above return has been prepared under my directions and is correct according to the books of the bank.

E. F.,

Chief Accountant, (or Acting Chief
Accountant, as the case may be).

We declare that the foregoing return is made up from the books of the bank, and that to the best of our knowledge and belief it is correct.

(Place) ————— this — day of ———, 19—.

A. B.,

President, (Vice-President, or Direc-
tor acting as President, as the case
may be).

C. D.,

General Manager, (or other principal
officer, as the case may be).

SCHEDULE F.

(SEE SECTION 114.)

Return of unpaid dividends, balances and amounts, certified cheques, drafts and bills of exchange of the _____ Bank at the close of the calendar year 19—, made in accordance with the provisions of sub-sections 1 to 5, inclusive, of section 114 of The Bank Act.

.....

.....

.....

I declare that the above return has been prepared under my directions and is correct according to the books of the bank.

E. F.,
Chief Accountant, (*or Acting Chief
Accountant, as the case may be*).

We declare that the foregoing return is made up from the books of the bank, and that to the best of our knowledge and belief it is correct.

(Place) _____ this — day of —, 19—.

A. B.,
President, (Vice-President, *or Director acting as President, as the case may be*).

C. D.,
General Manager, (*or other principal officer, as the case may be*).

CHEQUES ON A BANK.

BILLS OF EXCHANGE ACT.

REVISED STATUTES OF CANADA, 1906.

CHAP. 119. PART III.

The law of Canada on the subject of Cheques is found in the Third Part of the Bills of Exchange Act, which consists of eleven sections, 165 to 175, inclusive. The first three of these relate to cheques generally, and the remaining eight to crossed cheques. They are taken from the Imperial Bills of Exchange Act, 1882, with but two slight changes. The first is the substitution of the word "bank" for "banker." The reason for this is that in England the banking business is carried on largely by individuals and incorporated companies, while in Canada the Bank Act and the Bills of Exchange Act recognize only incorporated banks and savings banks. The other is the addition of sub-section 7 to section 169.

Although the language of the Imperial and Canadian Acts is thus substantially identical, there are two marked differences between the law and the practice in the two countries. The first is in section 60 of the Imperial Act, which provides that when a bill payable to order on demand is drawn on a banker, and he pays it in good faith, he is not responsible even if the indorsements are forged. This rule applies to a cheque, which is a bill of exchange drawn on a banker payable on demand. An effort was made by the banks to have this clause embodied in the Canadian Act, but the House of Commons was unwilling to make the change. The use of crossed cheques in England has been adopted largely to overcome the danger

arising from such forged indorsements. Under the Canadian law there is not the same necessity, and although the Act has introduced the English statute as to the crossing of cheques, the practice has been adopted to a very limited extent.

The other great difference arises from the fact that the practice of getting cheques marked or accepted, so general in Canada, is also unknown in England. Byles says, in his work on Bills, that cheques are not accepted, and that to issue them accepted would probably be an infringement of the Bank Charter Acts.

A cheque drawn upon a private banker would not be a cheque within the meaning of the Bills of Exchange Act, and would not be subject to the special rules contained in this part of the Act, such as crossing and the like. It would be simply a bill of exchange, payable on demand, and subject to such provisions of the Act as apply to an instrument of that kind: *Trunkfield v. Proctor*, 2 O. L. R. 326 (1901). It would, however, under section 10 of the Act, be subject to such provisions of the common law or the law merchant, as are not inconsistent with the provisions of the Act.

In the following notes the references are to the Bills of Exchange Act, and not to the Bank Act, when the word "Act" or "section" is used without any more particular designation.

165. Cheque defined.—A cheque is a bill of exchange drawn on a bank, payable on demand.
53 V. c. 33, s. 72. Imp. Act, s. 73.

Reading this definition in connection with that of a bill of exchange in section 17 of this Act, a cheque is an unconditional order in writing addressed by a person to a bank, signed by the person giving it, requiring the bank to pay on demand a sum certain in money to, or to the order of a specified person, or to bearer.

According to the definition in section 2 (c), “ bank ” means “ an incorporated bank or savings bank carrying on business in Canada ”; that is, one of the banks to which the Bank Act 3-4 Geo. V. ch. 9, applies; or a savings bank under R. S. C. ch. 30 or 3-4 Geo. V., ch. 42; or a penny bank under R. S. C. ch. 31; or a bank under an old provincial charter.

In Quebec, under the Code, a cheque might be drawn upon a private banker as well as upon an incorporated bank: Art. 2349. This was the law before the Act in the other provinces also.

A cheque should be addressed to the bank by its proper corporate name, and not to the “ cashier,” “ manager ” or “ agent ” of the bank. An instrument addressed to one of these would not, strictly speaking, be a cheque within the meaning of the Act, and if marked or accepted it might be claimed that the bank was not liable, as it would not be the drawee of the instrument and consequently could not become liable by acceptance.

The words “ on demand ” need not be on the cheque, as they are understood when no time for payment is expressed: sec. 23.

A document in the form of a cheque addressed by one branch of a bank to another branch of the same bank is not a cheque within the meaning of this section, drawer and drawee being the same person: *Brown v. National Bank*, 18 T. L. R. 669 (1902); *Capital and Counties Bank v. Gordon*, [1903] A. C. 240; *London City and Midland Bank v. Gordon*, [1903] A. C. 240.

An order in the form of an ordinary cheque with the following words added: “ Provided the receipt form at the foot hereof is duly signed, stamped and dated,” is not a cheque, not being unconditional: *Bavins v. London and S. W. Bank*, [1900] 1 Q. B. 170.

A cheque is not invalid because it is not dated, nor because it does not specify the place where it was drawn,

nor because it is antedated, or post-dated or bears date on a Sunday or other non-juridical day; sec. 27: *Wood v. Stephenson*, 16 U. C. Q. B. 419 (1858); and the fact that it is post-dated is not an irregularity: *Hitchcock v. Edwards*, 60 L. T. N. S. 636 (1889); *Carpenter v. Street*, 6 T. L. R. 410 (1890). But a cheque dated seven days after delivery is in substance a bill of exchange at seven days' date: *Forster v. Mackreth*, L. R. 2 Ex. 163 (1867). A bank should not pay a cheque before the day of its date: *DaSilva v. Fuller*, cited in *Morley v. Culverwell*, 7 M. & W. 178 (1840).

In the United States there has been a conflict as to whether a cheque may be made payable on a day subsequent to its date. The weight of authority is in favour of what is law under our Act, that such an instrument is not a cheque, and has three days' grace. See *Bowen v. Newell*, 13 N. Y. 290 (1855); *Morrison v. Bailey*, 5 Ohio St. 13 (1855); *Harrison v. Nicollet Bank*, 41 Minn. 488 (1889); 2 Daniel, sec. 1574. But see contra *Re Brown*, 2 Story, C. C. 502 (1843); *Westminster Bank v. Wheaton*, 4 R. I. 30 (1856); *Champion v. Gordon*, 70 Penn. St. 474 (1872); *Way v. Towle*, 155 Mass. 374 (1892). As in those states that have adopted the Negotiable Instruments Law, there are no days of grace, the question has become of less practical importance.

When a cheque is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit: sec. 31.

A cheque is "issued" when it is in the hands of a person who is entitled to demand cash for it: *Ex parte Bignold*, 22 Beav. 143 (1856). "Issue" means the first delivery of a bill or note, complete in form, to a person who takes it as holder: sec 2 (i).

Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable: sec. 28.

A material alteration of a cheque makes it void. If the alteration is not apparent a holder in due course may avail himself of it as if it had not been altered, and may enforce payment of it according to its original tenor: sec. 145. The following alterations are material:

1. Alteration of the date or of the sum payable: sec. 146; even though it be to change it to a later date: *Boulton v. Langmuir*, 24 Ont. A. R. 618 (1897).

2. Changing "order" to bearer: *Re Commercial Bank*, 10 Man. 171 (1894); *Booth v. Powers*, 56 N. Y. 22 (1874).

A customer drew a cheque for \$5 and had it "marked." He altered it to \$500 and deposited it with another bank and drew the money. The cheque was sent through the Clearing House, and was charged against the former bank as \$500. The following morning the forgery was discovered and notice given, and a refund of \$495 claimed. The claim was maintained on the ground that the notice was in time and the latter bank had not altered its position in the meantime: *Imperial Bank v. Bank of Hamilton*, [1903] A. C. 49.

The Act does not make it a part of the definition that the drawer should be a customer of the bank; but if a person gets goods or money on the strength of a cheque when he has no account he is guilty of obtaining the goods or money by false pretences, and is liable to three years' imprisonment: Criminal Code, R. S. C. ch. 146, sec. 405; *Rex v. Jackson*, 3 Camp. 370 (1813); *Reg. v. Hazelton*, L. R. 2 C. C. 134 (1874).

The giving of a post-dated cheque implies no more than a promise to have sufficient funds in the bank on the date thereof, and is not, in itself, a false representation of a fact past or present: *The King v. Richard*, 11 Can. Cr. Cas. 279 (1906).

There have been conflicting decisions as to whether a cheque is money. A good deal will depend on the language of the statute to be construed.

The mere fact that a cheque is drawn with spaces which can be utilized for the purposes of fraudulent alteration is not by itself any violation of duty by the customer to his banker: *Schofield v. Londesborough*, [1896] A. C. followed; *Colonial Bank v. Marshall*, [1906] A. C. 599.

2. **Provisions as to bills to apply.**—Except as otherwise provided in this part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque. 53 V., c. 33, s. 72. Imp. Act, s. 73.

The exceptions are, (1) that failure to present a cheque for payment within a reasonable time does not discharge the drawer, except in so far as he is damaged thereby: sec. 176; (2) that the bank should not pay after notice of the customer's death: sec. 167; and (3) the provisions relating to crossed cheques: secs. 168 to 175, inclusive.

The law as to the presentment of a cheque for payment differs from that respecting a bill of exchange payable on demand. In suing on a cheque it is not necessary to allege or prove presentment within a reasonable time or protest for non-payment. These are matters of defence. It is for the drawer to allege and prove damage: *De Serres v. Euard*, Q. R. 17 S. C. 199 (1899).

The chief provisions of the Act relating to bills payable on demand, which also apply to cheques, are the following: (1) There are no days of grace: sec. 42; (2) when they appear on their face to have been in circulation for an unreasonable length of time they are deemed to be overdue, so as to prevent a holder from acquiring them free from defects of title: sec. 70; (3) they must be presented for payment within a reasonable time after endorsement to charge an endorser: sec. 86.

A cheque being a bill of exchange does not operate as an assignment of funds in the hands of the bank

available for the payment thereof, and until it accepts a cheque the bank is not liable on it: sec. 127. The holder of an unaccepted cheque, consequently, cannot sue the bank upon it, except under the circumstances mentioned in section 166. Under the Code it was held in Quebec that a cheque was an assignment of so much of the drawer's funds: *Marler v. Molsons Bank*, 23 L. C. J. 293 (1879). This is the law in Scotland: sec. 53, sub-sec. 2 of the Imperial Act; and also in France: Nonguier (ss.) 392, 431.

Section 49 of the Act provides that where a signature on a bill is forged or placed thereon without authority it is wholly inoperative: Provided that if a cheque payable to order is paid by the drawee upon a forged indorsement out of the funds of the drawer, or is so paid and charged to his account, the drawer shall have no right of action against the drawee for the recovery back of the amount so paid, nor any defence to any claim made by the drawee for the amount so paid unless he gives notice in writing of such forgery to the drawee within one year after he has acquired notice of such forgery. In case of failure by the drawer to give such notice within the said period, such cheque shall be held to have been paid in due course as respects every other party thereto, who has not previously instituted proceedings for the protection of his rights.

Cheques certified or accepted.—A cheque or any bill payable on demand does not require acceptance, and the only presentment usually contemplated is that for payment. If, however, instead of presenting the instrument for payment at once, the drawer or holder prefers to accept in the meantime the credit of the drawee bank instead of the money, there is nothing in the common law or the law merchant to prevent the latter from accepting the bill or cheque and thus becoming subject to the provisions of the Act relating to an acceptor.

In England Lord Mansfield discussed the making of a demand draft or cheque upon a banker in *Robson v. Bennett*, 2 Taunt. 388 (1810), and says, at p. 396: "The effect of that marking is similar to the accepting of a bill," and that it is a practice of bankers after a certain hour only to mark bills and pay them at the clearing house the next day. In *Keene v. Beard*, 8 C. B. N. S., at p. 380 (1860), Erle, C.J., says: "A custom has grown up among bankers themselves of marking cheques as good for the purposes of clearance, by which they become bound to one another." The text writers on the subject explain that the practice did not extend in England, as it would be a violation of the Bank Charter Acts to issue cheques after their acceptance by the banks on which they were drawn. It would appear that the marking by English banks is something informal and not sufficient to constitute acceptance under section 17 of the Imperial Act, and the rights thereby acquired do not appear to have come up for judicial determination.

In the United States the practice is one of comparatively recent growth, but has become general, and in the city of New York alone, the daily aggregate of certified cheques, it is said, amounts to hundreds of millions of dollars. Where the holder of a cheque gets it accepted by the drawee bank it is as if he had drawn the money, as he is entitled to do, and re-deposited it to the credit of the holder of the cheque, which thereby becomes the equivalent of a deposit receipt payable to the holder: 2 Daniel, sec. 1603. The Negotiable Instruments Law has recognized and adopted the practice in the following sections: "323. Where a cheque is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.—324. Where the holder of a cheque procures it to be accepted or certified, the drawer and all indorsers are discharged from all liability thereon."

In Canada the practice is said to have been introduced forty or fifty years ago and is now firmly established.

There is nothing in the Bills of Exchange Act or in the Bank Act to interfere with it as in England. It has long been well settled that by such certification or acceptance the bank becomes liable to the holder, and that there is privity between them: *Banque Nationale v. City Bank*, 17 L. C. J. 197 (1873); *Exchange Bank v. Banque du Peuple*, M. L. R. 3 Q. B. (1886); *Re Commercial Bank*, 10 Man. R. 171 (1894).

If the cheque is certified at the request of the drawer before issue the liability of the drawer and indorsers is different from what it is when certified at the request of a holder. In the former case the bank is in the position of an ordinary acceptor, and its credit is added to that of the drawer; in the latter case the bank becomes the sole debtor and the drawer and endorsers are discharged.

An illustration of acceptance at the request of the drawer is found in *Gaden v. Newfoundland Savings Bank*, [1899] A. C. 281—a case from Newfoundland where the American and Canadian practice had been adopted. Their Lordships of the Privy Council speak of the operation (p. 285), as “this mode of indicating the acceptance of a cheque by the bank on which it is drawn,” and proceed to say: “A cheque certified before delivery is subject, as regards its subsequent negotiation, to all the rules of uncertified cheques. The only effect of the certifying is to give the cheque additional currency, by shewing on the face that it is drawn in good faith on funds sufficient to meet its payment, and by adding to the credit of the drawer that of the bank on which it is drawn.” A similar case from Canada is that of the *Imperial Bank v. Bank of Hamilton*, [1903] A. C. 49, where the foregoing case was approved and followed. Their Lordships say, at p. 54: “The effect of this marking or certifying” (at the request of the drawer), “was examined and explained by this Board in *Gaden v. Newfoundland Savings Bank*.”

There is no legislation in Canada similar to the rule in section 324 of the Negotiable Instruments Law above quoted, but it is founded on principle and the Canadian Courts adopted it before the Act of 1880, and have since consistently followed it: *Boyd v. Nasmith*, 17 O. R. 40 (1888); *Légaré v. Arcand*, Q. R. 9 S. C. 122 (1895); *Banque Jacques Cartier v. Corporation of Limoilu*, Q. R. 17 S. C. 211 (1899); *Brunelle v. Ostiguy*, Q. R. 21 K. B. 302 (1911); *Merchants Bank v. State Bank*, 10 Wall. (U.S.), 647 (1870), and *First National Bank v. Leach*, 52 N. Y. 350 (1873), followed.

The contract of the drawer of a cheque is that if it is presented to the bank on which it is drawn within a reasonable time it will be paid. If, however, the holder instead of presenting it for that purpose requests the bank to accept or certify it, thereby withdrawing the amount entirely from the control of the drawer, and accepting instead of the money the promise of the bank to pay it to him or to any future holder of the cheque, he accepts this new contract in lieu of that of the drawer and not in addition to it. The effect in each of the four last above cited cases was that the holder by so acting prevented the drawer from withdrawing his deposit as he might otherwise have done when the banks were on the eve of suspension.

In only one of the foregoing cases is the precise form of the certificate or acceptance shewn; but they would all appear to have been a sufficient compliance with the laws in force at the time, and to have been written on the bill, and to bear the stamped name of the bank or the initials of the proper officer, or something that had been adopted by the bank as its signature for this purpose, in some cases with the word "accepted," "good," "certified" or some equivalent expression. The bank may, under section 38, give only a qualified acceptance or even indicate that its marking or certifying of the cheque is not to be taken as an acceptance; but unless it does so in clear terms, it should be held to have given the usual undertaking.

Among the effects of such certifying would appear to be the following: (1) the bank becomes the principal debtor and engages that it will pay the cheque to the holder on demand or at some later time named: sec. 128; (2) the bank is subject to the estoppels in section 129; (3) the drawer has no longer the right to countermand payment of the cheque after its issue; and (4) if presented for acceptance by a holder and not by the drawer, the drawer and all endorsers antecedent to such holder are discharged.

If a cheque is certified at the request of the drawer and he does not issue it or subsequently becomes the holder, he may either have the certificate cancelled and the entry reversed, or may deposit it in the bank with a like effect.

Payment by cheque. — A creditor is not bound to take a cheque in payment of a debt; if he does so it will be presumed, in the absence of clear proof to the contrary, to have been taken only as conditional payment. If it is paid on presentation, or if it has been dishonoured solely on account of laches in presenting it, the debt is discharged as of the date of its delivery; otherwise the debt revives and again becomes exigible on its dishonour: *Hughes v. Canada Permanent*, 39 U. C. Q. B. 221 (1876).

If a creditor requests his debtor, either expressly or impliedly, to remit a cheque by post, and it is lost without negligence on the part of the debtor, any loss would fall on the creditor.

If a creditor chooses to accept the cheque of his debtor or of a third party for a smaller amount than the debt, the debt would be discharged, even where there is no such statute as R. S. O. 1914, ch. 133, sec. 16, providing that part performance when expressly accepted in satisfaction shall extinguish the obligation. But where a cheque was sent "in full of all demands" and retained and cashed and a receipt sent as on account,

and the creditor sued for the balance, it was held that the keeping of the cheque was not conclusive that there was accord and satisfaction, but that it was a question of fact on what terms the cheque was accepted, and the creditor recovered judgment for the balance: *Day v. McLea*, 22 Q. B. D. 610 (1889); followed in *Mason v. Johnston*, 20 Ont. A. R. 412 (1893); *Nathan v. Ogdens*, 22 T. L. R. 57 (1905), and *McPherson v. Copeland*, 9 W. L. R. 623 (1908). This, however, is not the law in the province of Quebec, where the technical rules of the English law as to accord and satisfaction do not obtain: *La Compagnie Paquet v. Paquin*, at p. 59 (1910). In England recently, in *Hirachand v. Temple*, [1911] 2 K. B. 330, it was held by the Court of Appeal, where the father of a debtor sent a cheque for a smaller sum "in full settlement," the creditor could not retain the cheque without complying with the terms on which it was sent.

An agent who accepts a cheque without authority and grants a release is liable on the dishonour of the cheque: *Pape v. Westcott*, [1894] 1 Q. B. 272. So also is a solicitor: *Blumberg v. Life Interests Corporation*, [1898] 1 Ch. 27.

ILLUSTRATIONS.

1. The production of a cheque is not even *prima facie* evidence of money lent by the drawer: *Foster v. Fraser*, Rob. & Jos. Dig. 652 (1840); *Nichols v. Ryan*, 2 R. L. 111 (1868); *Dufresne v. St. Louis*, M. L. R. 4 S. C. 310 (1888).

2. A cheque may be post-dated, and is then payable on the day of its date without grace: *Wood v. Stephenson*, 16 U. C. Q. B. 419 (1858).

3. Where plaintiffs accepted from defendant a cheque of a third party in part payment of goods, and presented it at the bank the next day, and also applied several times to the drawer, but did not notify the defendant for a week, held that the latter was not liable: *Redpath v. Kolfage*, 16 U. C. Q. B. 433 (1858).

4. Plaintiff deposited in defendant's bank the cheque of a third party on another bank in the same town. Defendants credited it in his pass-book as cash and stamped it as their property. They presented it the next business day when it was dishonoured. If they had presented it the same day it would have been paid. Held, that the bank was not liable: *Owens v. Quebec Bank*, 30 U. C. Q. B. 382 (1870).

5. Where a bank paid cheques on forged indorsements, the receipt given by the plaintiffs at the end of the month was, at most, an acknowledgment that the balance was correct on the assumption that the cheques had been paid to the proper parties. Where the names of the payees had also been forged on an application for a loan to plaintiffs, the cheques were not payable to fictitious payees: *Agricultural S. & L. Association v. Federal Bank*, 6 Ont. A. R. 192 (1881).

6. The Bank of Montreal allowed a private banker at London to put on his cheques "payable at Bank of Montreal, Toronto, at par." Held, that these words simply meant that there would be no charge for cashing the cheques, and not that the Bank of Montreal would pay them if there were no funds of the drawer to meet them: *Rose-Belford Printing Co. v. Bank of Montreal*, 12 O. R. 544 (1886).

7. The Finance Minister deposited a cheque on the Bank of P. E. I. in the Bank of Montreal, at Ottawa, which placed the amount to his credit. On the dishonour of the cheque the Bank of Montreal was entitled to reverse the entry, as it was not a holder for value, but merely an agent for collection: *The Queen v. Bank of Montreal*, 1 Exch. Can. 154 (1886).

8. The agent of a life insurance company sent in applications, some genuine and some forged, on which the company sent him policies. The genuine ones lapsed, but he kept both classes on foot and sent in forged claims representing that the parties were dead. Cheques

were sent to him payable to the order of the alleged claimants whose names were forged. He endorsed the cheques in the names of the respective payees, and received the proceeds from the bank. Held that the cheques were payable to fictitious or non-existent persons, and therefore payable to bearer, and the bank was not liable to the insurance company: *London Life Ins. Co. v. Molsons Bank*, 8 O. L. R. 238 (1904). See *Vinden v. Hughes*, [1905] 1 K. B. 795; *Macbeth v. N. & S. Wales Bank*, [1906] 2 K. B. 718.

9. An instrument in the form of a cheque with the words "cheque conditional deposit" written on the face of it, is not a cheque, not being an unconditional order to pay: *Hately v. Elliott*, 9 O. L. R. 185 (1905).

10. A government clerk forged departmental cheques, and deposited them under a fictitious name in different banks which collected them from the drawee bank through the clearing house, and paid out the money after the payment of the cheques. By fraudulent checking of the lists of departmental cheques paid, he procured the sending to the bank certificates of the correctness of such lists. His forgeries were not discovered for months. Held, affirming the trial Judge and the Ontario Court of Appeal, that there could be no estoppel against the Crown, that the drawee bank was liable and could not recover from the collecting banks: *Bank of Montreal v. The King*, 38 S. C. Can. 258 (1907). Leave to appeal refused by Privy Council.

10A. Where the forgery of a cheque consists in the amount being raised, the collecting bank has been held to the drawee bank for the amount by which the cheque was raised, and which had been paid through the clearing house: *Imperial Bank v. Bank of Hamilton*, [1903] A. C. 49; *Dominion Bank v. Union Bank*, 40 S. C. Can. 366 (1908).

11. Section 22 of the Bills of Exchange Act applies to cheques: *Bank of B. N. A. v. Warren*, 19 O. L. R. 257 (1909).

12. A bank was held liable for the amount of a cheque it had lost, which the drawer disputed, although the latter had been guilty of negligence in not objecting earlier when it was entered in his pass-book: *Fournier v. Union Bank*, 2 Stephens' Que. Dig. 99 Cons. Que. Dig. 185 (1873).

13. Where an account bears interest, it ceases on the amount of a cheque drawn on the account when the cheque is marked, although the money is not actually drawn out until long after: *Wilson v. Banque Ville Marie*, 3 L. N. 71 (1880).

14. A bank was held liable to the holder of a marked cheque: *Banque Nationale v. City Bank*, 17 L. C. J. 197 (1873), even when marked good only on a future day by the president and cashier: *Exchange Bank v. Banque du Peuple*, M. L. R. 3 Q. B. 232 (1886). Items of claim older than a cheque cannot properly be set up in compensation against it: *Dorion v. Dorion*, 5 L. N. 130 (1882).

15. An instrument in the form of a cheque is none the less a cheque because not drawn against money on deposit, but because an overdraft or advance by the bank: *Bank of Montreal v. Rankin*, 4 L. N. 302 (1881).

16. A cheque should be presented the day after delivery and notice of dishonour given to charge the indorser: *Lord v. Hunter*, 6 L. N. 310 (1883); *Boddington v. Schlenker*, 4 B. & Ad. 752 (1833).

17. A cheque is a commercial matter, especially when given by a trader, and payment of it may be proved by parol in the province of Quebec, even when above \$50: *Baril v. Tetrault*, 29 L. C. J. 208 (1885).

18. A bank acting as agent for another bank is not authorized, in the absence of an express agreement, to cash a cheque drawn upon the principal bank, but not accepted by it: *Maritime Bank v. Union Bank*, M. L. R. 4 S. C. 244 (1888).

19. A cheque payable to C. M. & S., or bearer, was indorsed by them and stamped for deposit to their credit in the bank where they kept their account. Their clerk, instead of depositing it, took it to the bank on which it was drawn, and the teller paid it without noticing the writing on the back. It was held that such a cheque could not be restrictively indorsed, and the bank so paying it was not liable: *Exchange Bank v. Quebec Bank*, M. L. R. 6 S. C. 10 (1890).

20. Where a person for accommodation lends his cheque to another person he cannot refuse to pay the same to a third party who in good faith has given value for it: *Kenny v. Price*, 20 R. L. 1 (1890).

21. A person receiving a cheque seven months after its date, and after it was drawn, has no greater right against the drawer than the previous holder, in whose hands it was void as having been given for illegal expenditure at an election: *Dion v. Boulanger*, Q. R. 4 S. C. 358 (1893); confirmed in Review, 31st October, 1893.

22. A third party, who is the holder in good faith, of a cheque given in settlement of a gambling debt, can recover the amount. The fact that the cheque was not presented at the bank until a month after it was drawn does not prevent recovery against the drawer: *Dion v. Lachance*, Q. R. 14 S. C. 77 (1898).

23. Cheques and other negotiable instruments are presumed to have been given for value although this is not expressed. The evidence to rebut this presumption must be clear and convincing: *Larraway v. Harvey*, Q. R. 14 S. C. 97 (1898).

24. L. gave an agent A. a cheque payable to the order of M., marked "deposit," to be used as a deposit on a purchase from the latter through his intervention. M. indorsed and applied the cheque on an old account against A. Held, that M. was, under the circumstances, bound to account to L. for the amount of the cheque: *Leipschitz v. Montreal Street Ry. Co.*, Q. R. 9 Q. B. 518 (1899).

25. The payee of a cheque endorsed it and gave it for collection to a bank, which placed to his credit the amount less the cost of collection, and sent it to the bank on which it was drawn, accepting a draft on the head office of the latter bank. This was sent through the clearing house, but before presentation the bank (drawee) had suspended payment. Held, that the payee incurred only the ordinary liability of an indorsee and was liberated by the surrender of the cheque, and the acceptance of the draft: *Banque de St. Hyacinthe v. Guilbault*, 8 R. J. 115 (1901).

26. The initialling of a cheque by the cashier does not amount to an acceptance. A cheque so initialled received by the defendant only a few days before the trial, when it was more than four years old, could not be used by him as a set-off to the bill of exchange on which he was sued: *Commercial Bank v. Fleming*, 1 Stevens' N. B. Dig. 294 (1872).

27. H. owed defendant \$500, and induced him to indorse his (H.'s) cheque for \$1,000 on a bank at N., out of the proceeds of which the debt was to be paid. The two went to a bank at W. to get cash for the cheque. H. alone went into the manager's room, and on his return told defendant he had given the cheque to the manager to forward it to N. for collection. H., in fact, retained the cheque, and the same day transferred it to plaintiff for value. Held, that defendant was liable on the cheque: *Arnold v. Caldwell*, 1 Man. L. R. 81 (1884).

28. Where a bank certified a cheque at the request of the drawer, who afterwards altered it, making it payable to bearer instead of to order; this is a material alteration, and the bank is not liable on the cheque to the drawer or his assigns: *Re Commercial Bank, Banque d'Hochelaga's Case*, 10 Man. L. R. 171 (1894).

29. A banker paid a cheque where the amount had been raised, but in such a way that it could not be easily detected. He was held liable to the customer for the

difference between the genuine and the altered cheque: *Hall v. Fuller*, 5 B. & C. 750 (1826).

30. Where a cheque was so carelessly drawn as to be easily altered by the holder to a large sum, so that the bankers, when they paid it, could not distinguish the alteration: Held, that the loss must fall on the drawer, as it was caused by his negligence: *Young v. Grote*, 4 Bing. 253 (1827). Overruled by *Imperial Bank v. Bank of Hamilton*, [1903] A. C. 49.

31. Filling in a blank cheque with a larger sum than that authorized is forgery: *Reg v. Wilson*, 2 C. & K. 527 (1847).

32. The holder of an unaccepted cheque has no right of action against a bank even if it has improperly refused to honour the cheque, as there is no privity of contract between him and the bank: *Malcolm v. Scott*, 5 Exch. 601 (1850); *Fourth Street Bank v. Yardley*, 165 U. S. 634 (1897).

33. If there are not sufficient funds to meet a cheque, the bank should not give any more than the information of the fact; it should not disclose the actual balance: *Foster v. Bank of London*, 3 F. & F. 214 (1862).

34. An authority to draw cheques does not necessarily include an authority to draw bills: *Forster v. Mackreth*, L. R. 2 Ex. 163 (1867).

35. The cheque of a third party may be the subject of a valid *donatio mortis causa*: *Veal v. Veal*, 27 Beav. 303 (1859); *Clement v. Cheeseman*, 27 Ch. D. 631 (1884). The cheque of the donor, not presented until after his death, is not: *Hewitt v. Kaye*, L. R. 6 Eq. 198 (1868); *Beak v. Beak*, L. R. 13 Eq. 489 (1872). It is, if presented, even though not paid: *Bromley v. Brunton*, L. R. 6 Eq. 275 (1868).

36. A cheque is not an equitable assignment of so much of the drawer's funds in the hands of his banker,

or of a chose in action: *Hopkinson v. Forster*, L. R. 19 Eq. 74 (1874); *Schroeder v. Central Bank*, 34 L. T. N. S. 735 (1876).

37. Where a person pays a post-dated cheque into his bank in order that the amount may be placed to the credit of his account, and the amount is so placed, the bank are holders for value of the cheque: *Royal Bank v. Tottenham*, [1894] 2 Q. B. 715.

38. A cheque is drawn in favour of a person who does not really exist, although the drawer supposes that he does. This does not prevent the cheque being really payable to bearer, under section 7, sub-section 3, of the Bills of Exchange Act (now sec. 21, sub-sec. 5), as being payable to a fictitious or non-existing person: *Clutton v. Attenborough*, [1895] 2 Q. B. 707; affirmed, [1897] A. C. 90.

39. The only effect of a drawee bank initialling a cheque is to certify that it has funds of the drawer to meet it. Where a certified cheque is deposited in another bank and credited to the depositor, the presumption is that the bank accepted it as agent of the depositor to cash it, and not as acquiring title and guaranteeing its payment: *Gaden v. Newfoundland Savings Bank*, [1899] A. C. 281.

40. Defendant, who was not a party to a cheque, at the request of the payee, wrote his name on the back of it, adding the words *sans recours*. It was held that under section 16 of the Bills of Exchange Act, he could thus negative his liability as an indorser: *Wakefield v. Alexander*, 17 T. L. R. 217 (1901).

41. A banker's draft payable to order on demand, addressed by one branch of a bank to another branch of the same bank and not crossed, is not a cheque, not being addressed by one person to another: *Capital and Counties Bank v. Gordon*, [1903] A. C. 240.

42. If the drawer of a cheque gets it accepted and then delivers it to the payee, the drawer is not discharged; and if the payee before delivery requests the drawer to send it to the bank and gets it accepted, the rule is the same: *Randolph Bank v. Hornblower*, 160 Mass. 401 (1894).

43. Where the holder procures certification of a cheque "in full settlement," this is an acceptance of the cheque in full settlement of the debt, although after certification the holder wrote declining to accept it in full settlement: *St. Regis Paper Co. v. Tonawanda Co.*, 107 App. Div. (N.Y.) 90 (1905); *Dunn v. Whalen*, *ibid.* 729 (1907).

166. Presentment for payment.—Subject to the provisions of this Act—

(a) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment, as between him and the bank, to have the cheque paid, and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such bank to a larger amount than he would have been had such cheque been paid. 53 V., c. 33, s. 73. Imp. Act, s. 74 (1).

The provisions of the Act to which this section is subject, are those in section 91 relating to excuses for non-presentment and delay in presentment.

As regards the drawer, the effect of not presenting a cheque for payment within a reasonable time differs from that relating to other bills payable on demand. In

the case of the latter the drawer as well as the indorsers are wholly discharged by the failure to present it for payment within a reasonable time: sec. 85. This part of the Act relating to cheques does not modify the rule as regards the indorsers; but the present section lays down a different rule as regards the drawer, who is only discharged to the extent to which he actually suffers damage by the delay.

Chalmers says, p. 250: " This section is new law. It was introduced in the Lords by Lord Bramwell to mitigate the rigour of the common law rule. At common law a mere omission to present a cheque for payment did not discharge the drawer, until, at any rate, six years had elapsed, and in this respect the common law appears to be unaltered. But if a cheque was not presented within a reasonable time, as defined by the cases, and the drawer suffered actual damage by the delay, *e.g.*, by the failure of the bank, the drawer was absolutely discharged, even though ultimately the bank might pay (say) fifteen shillings in the pound." The section is substantially the law of Quebec before the Act, the Code placing the indorsers in the same position:—" If the cheque be not presented for payment within a reasonable time, and the bank fail between the delivery of the cheque and such presentment, the drawer or indorser will be discharged to the extent of the loss he suffers thereby ": Art. 2352. See also *Re Oulton*, 15 N. B. (2 Pugs.) 333 (1874).

When the drawer or other person is thus discharged, the holder is a creditor of the bank to the extent of such discharge: clause (b).

The law as to the presentation of a cheque differs from that respecting a bill of exchange payable on demand. In suing on a cheque it is not necessary to allege or prove presentment within a reasonable time, or to protest for non-payment. These are matters of defence. It is for the drawer to allege and prove damage: *De Serres v. Euard*, Q. R. 17 S. C. 199 (1899).

- (b) **Holder a creditor.**—The holder of such cheque, as to which such drawer or person is discharged, shall be a creditor, in lieu of such drawer or person, of such bank to the extent of such discharge, and entitled to recover the amount from it. 53 V., c. 33, s. 73 (c). Imp. Act, s. 74 (2), (3).

This is, to a certain extent, a modification of the rule in section 127. In England it introduced partially the Scotch principle of sub-section 2 of that section, and in Canada it recognizes in this particular case the principle laid down in Quebec in *Marler v. Molsons Bank*, 23 L. C. J. 293 (1879). These countries adopted it from the civil law.

2. **Reasonable time.**—In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of banks, and the facts of the particular case. 53 V., c. 33, s. 73 (b). Imp. Act, s. 74 (2).

The following are said to embody the rules as to what is a reasonable time for the presentment of cheques in England:

1. If the person who receives a cheque and the bank on whom it is drawn are in the same place, the cheque must, in the absence of special circumstances, be presented for payment on the day after it is received: *Alexander v. Burchfield*, 7 M. & Gr. 1061 (1842); *Firth v. Brooks*, 4 L. T. N. S. 467 (1861).

2. If the person who receives a cheque and the bank on whom it is drawn are in different places, the cheque must, in the absence of special circumstances, be forwarded for presentment on the day after it is received, and the agent to whom it is forwarded must, in like

manner, present it or forward it on the day after he receives it: *Hare v. Henty*, 10 C. B. N. S. 65 (1861); *Prideaux v. Criddle*, L. R. 4 Q. B. 455 (1869); *Heywood v. Pickering*, L. R. 9 Q. B. 428 (1874).

3. In computing time, non-business days must be excluded; and when a cheque is crossed, any delay caused by presenting the cheque pursuant to the crossing is excused: sec. 91.

These rules are substantially those that have been recognized in Canada. See *Redpath v. Kolfage*, 16 U. C. Q. B. 433 (1858); *Owens v. Quebec Bank*, 30 *ibid.* 382 (1870); *Boyd v. Nasmith*, 17 O. R. 40 (1888); *Blackley v. McCabe*, 16 Ont. A. R. 295 (1889); *Sawyer v. Thomas*, 18 Ont. A. R. 129 (1890); *Marler v. Stewart*, Cons. Que. Dig. 212 (1878); *Campbell v. Riendeau*, Q. R. 2 Q. B. 604 (1892).

A cheque is deemed to be stale or overdue when it appears on its face to have been in circulation an unreasonable time: sec. 70. A bank is not justified in paying such a cheque without inquiry: *Serle v. Norton*, 2 M. & Rob. 401 (1841).

Whether a cheque is presented within a reasonable time is a question for the jury. In this case they found the delay (4 days) to be unreasonable: *Wheeler v. Young*, 13 T. L. R. 468 (1877).

As to what is a reasonable time where a cheque is drawn on a bank that is understood to be about to suspend payment, see *Légaré v. Arcand*, Q. R. 9 S. C. 122 (1895).

It has been held that a delay of six days is not necessarily an unreasonable time: *Rothschild v. Corney*, 9 B. & C. 388 (1829); nor seven days: *Bank of B. N. A. v. Warren*, 19 O. L. R. 257 (1909); nor eight days: *London and County Bank v. Groome*, 8 Q. B. D. 288 (1891); but that four months is an unreasonable time: *Northern Bank v. Yuen*, 11 W. L. R. 698 (1909); also two months: *Serrell v. Derbyshire Ry. Co.*, 9 C. B. 811 (1850).

Where the holder of a cheque presents it for acceptance instead of for payment, and the accepting bank fails, the drawer and indorsers are discharged: *Boyd v. Nashsmith*, 17 O. R. 40 (1888); *Légaré v. Arcand*, Q. R. 9 S. C. 122 (1895); *Banque Jacques Cartier v. Limoilou*, Q. R. 17 S. C. 211 (1899); *Brunelle v. Ostiguy*, Q. R. 21 K. B. 302 (1911); *Merchants Bank v. State Bank*, 10 Wall. (U.S.) 647 (1870); *First Nat. Bank of Jersey City v. Leach*, 52 N. Y. 350 (1873).

167. Revocation of authority.—The duty and authority of a bank to pay a cheque drawn on it by its customer are terminated by—

(a) Countermand of payment;

(b) Notice of the customer's death. 53 V., c. 33, s. 74. Imp. Act, sec. 75.

A bank having sufficient funds of the drawer of a cheque in its hands is bound to pay it, and in case of refusal is liable to an action of damages: *Marzetti v. Williams*, 1 B. & Ad. 415 (1830); *Whitaker v. Bank of England*, 6 C. & P. 700 (1835); *Foley v. Hill*, 2 H. L. Cas. 28 (1848); *Rolin v. Steward*, 14 C. B. 595 (1854); *Todd v. Union Bank*, 4 Man. R. 204 (1887); *Fleming v. Bank of New Zealand*, [1900] A. C. 577. The damages recoverable by a non-trader for the wrongful refusal of a bank to allow him to withdraw a special deposit, are nominal or limited to interest on the money: *Henderson v. Bank of Hamilton*, 25 O. R. 641 (1894); *Bank of New South Wales v. Milvain*, 10 Vict. R. (Law) 3 (1884).

Where the only evidence was that plaintiff's cheque was presented to the clerk of the defendant bank in charge of the A to K ledger, who told the party to present it at the L to Z ledger, and no evidence that it was presented there, the Judge in an action of damages, was justified in withdrawing the case from the jury: *Rear v. Imperial Bank*, 13 B. C. R. 345 (1908). Affirmed, 42 S. C. Can. 222 (1909).

Where a bank contracts for valuable consideration with a customer's agent to honour the customer's outstanding cheques, and allows them to be dishonoured, it is liable in damages to the customer: *Fleming v. Bank of New Zealand*, [1900] A. C. 577.

A bank may, without special instructions, pay any bills or notes, of which the customer is acceptor or maker, and which are payable at the bank: *Jones v. Bank of Montreal*, 29 U. C. Q. B. 448 (1869); *Kymer v. Laurie*, 18 L. J. Q. B. 218 (1849); *Robarts v. Tucker*, 16 Q. B. 560 (1851); *Vagliano v. Bank of England*, [1891] A. C. 107.

A bank refusing to pay such instruments incurs the same liability as in refusing to pay a cheque: *Hill v. Smith*, 12 M. & W. 618 (1844); *Bell v. Carey*, 8 C. B. 887 (1849).

As to whether a bank is entitled to time to make reasonable enquiries as to the genuineness of the indorsements on a cheque payable to order: see *ante* p. 290.

Cheques are payable in the order in which they are presented, irrespective of their dates, provided the date is not subsequent to the presentment: *Kilsby v. Williams*, 5 B. & Ald. 815 (1822).

Where a customer keeps his accounts at one branch of the bank, other branches are not bound to honour his cheques: *Woodland v. Fear*, 7 E. & B. 519 (1857). But if he has accounts in two or more branches, the bank may combine them against him, provided they are all in the same right: *Garnett v. McKewan*, L. R. 8 Ex. 10 (1872); *Prince v. Oriental Bank*, 3 A. C. 325 (1878).

If, however, the course of dealing was such that the customer was allowed to draw upon one account irrespective of the state of the other, the bank cannot combine them against him without a reasonable notice that the former course of dealing would be discontinued: *Cummings v. Shand*, 5 H. & N. 95 (1860); *Buckingham v. London & Midland Bank*, 12 T. L. R. 70 (1895); *Ireland v.*

North of Scotland Banking Co., 8 R. 215 (1880); *Kirkwood v. Clydesdale Bank*, 15 Sc. L. T. R. 413 (1907).

Entries made in a customer's pass book are *prima facie* evidence against the bank: *Commercial Bank v. Rhind*, 3 Macq. H. L. 643 (1860); *Couper's Trustees v. National Bank of Scotland*, 16 Sess. Cas. 412 (1889).

Countermand.—A customer may stop payment of a cheque before it is accepted, but not after: *Cohen v. Hale*, 3 Q. B. D. 371 (1878); *McLean v. Clydesdale Bank*, 9 App. Cas. 95 (1883); *Blake v. Hamilton Bank*, 87 N. E. R. 73 (1908), Ohio.

When a cheque is handed to a person on a condition which the drawer finds is to be broken or eluded, he has the right to stop the payment of the cheque: *Wienholt v. Spitta*, 3 Camp. 376 (1813); *Spincer v. Spincer*, 2 M. & Gr. 295 (1841).

An agreement that a cheque may be countermanded may be proved by parol against a holder who is not a holder in due course: *Semple v. Kyle*, 4 F. 421 (1902).

An action by a depositor against a bank for the full amount of his deposit is a countermand of the payment of an outstanding cheque: *Blackley v. McCabe*, 16 Ont. A. R. 295 (1889).

It has also been held that a bank is not bound to honour a customer's cheques after a garnishee order is served on it, even although the balance exceed the judgment: *Rogers v. Whiteley*, [1892] A. C. 118.

A vendor of goods, after being paid, fraudulently sold them to another purchaser, who bought in good faith and gave his cheque in payment. The cheque was cashed at another bank on being guaranteed by an indorser. The second purchaser, on being served with garnishee proceedings by the first, stopped payment of the cheque and paid the money into Court. The endorser meanwhile paid the purchasing bank and received

the cheque. Held, that he was entitled to the money in Court: *Wilder v. Wolf*, 4 O. L. R. 451 (1902).

The drawer of a cheque sent a telegram to the bank countermanding payment, which was placed in the letter box of the bank. It was left in the box when the rest of the letters, etc., were removed, and the cheque was presented and paid before the telegram came to the notice of the bank. Held, that there was no legal countermand, and the bank was not liable for the amount of the cheque even if the telegram was negligently overlooked. *Quære*—How far is a bank bound to act on an authenticated telegram? *Curtice v. London City and Midland Bank*, 24 T. L. R. 176 (1908).

Where the drawer of an accommodation cheque countermanded payment of it, a holder who gave value for it with knowledge of the countermand was not a holder in due course, and its accommodation character was a defect of title, and he could not recover: *Hornby v. McLaren*, 24 T. L. R. 494 (1908).

Death of customer.—Payment after the death but before notice is valid: *Rogerson v. Ladbroke*, 1 Bing. 93 (1822). It has been held in England that after the death of a partner, the surviving partner may draw cheques upon the partnership account: *Backhouse v. Charlton*, 8 Ch. D. 444 (1878). In Quebec the death of a partner terminates the partnership, and also the right of the survivors to act for the firm, in the absence of a special agreement to the contrary: C. C. 1892, 1897.

A bank was held liable to an estate for cheques of a solicitor paid after it had notice of his death, on the ground that although the account was in his own name, the moneys really belonged to the estate. *Bailey v. Jellet*, 9 Ont. A. R. 187 (1884).

A cheque given as a *donatio mortis causa* must be presented or negotiated before notice of the death of the donor in order to charge his estate: *Hewitt v. Kaye*,

L. R. 6 Eq. 198 (1868); *Beak v. Beak*, L. R. 13 Eq. 489 (1872); *Rolls v. Pearce*, 5 Ch. D. 730 (1877). But see *Colville v. Flanagan*, 8 L. C. J. 225 (1864); and *Clement v. Cheesman*, 27 Ch. D. 631 (1884).

CROSSED CHEQUES.

Sections 168 to 175, inclusive, treat of crossed cheques. They are copied from the Imperial Act, with the substitution of "bank" for "banker," as private bankers are not recognized by the Canadian Act. The practice of crossing cheques did not prevail in Canada before the Act, and it is not likely to be generally adopted now, as the drawer can protect himself by making a cheque payable to order, since our Parliament refused to adopt section 60 of the Imperial Act, which relieves a bank from responsibility for the genuineness or authorization of the indorsement on cheques drawn upon it.

The practice is a comparatively modern one in England, and is another illustration of the elasticity of the law merchant by which a custom obtains for itself judicial sanction or legislative recognition. From the report of *Stewart v. Lee*, 1 M. & M., at p. 161 (1828), it would appear that the effect of crossing was not then fully settled. It is described in *Boddington v. Schlenker*, 4 B. & Ad. 752 (1833); and in *Bellamy v. Majoribanks*, 7 Ex. at p. 402 (1852). Baron Parke there gives a history of its origin and growth.

The practice originated at the London clearing house, the clerks of the different bankers who did business there having been accustomed to write across the cheques the names of their employers, so as to enable the clearing house clerks to make up their accounts. It afterwards became a common practice to cross cheques which were not intended to go through the clearing house at all. Baron Parke held that this had nothing to do with the restriction of negotiability, and formed no part of the

cheque, and in no way altered its effect; but was a protection and safeguard to the owner, as, if a banker paid it otherwise than through another banker, the circumstance of his so paying would be strong evidence of negligence in an action against him. See also *Carlton v. Ireland*, 5 E. & B. 765 (1856).

The first Imperial Statute recognizing crossings was passed in 1856. In *Simmons v. Taylor*, 2 C. B. N. S. 528 (1857), it was held that the crossing was not a material part of the cheque and a holder might erase it. The Act of 1858 was passed to overcome the effect of this decision. In *Smith v. Union Bank of London*, 1 Q. B. D. 31 (1875), a cheque crossed to a certain bank was stolen, and coming into the hands of a *bona fide* holder, he got it cashed through his own bank. The Court held that the Act of 1858 did not affect the negotiability of the cheque which had been indorsed by the payee. In *Bobbett v. Pinkett*, 1 Ex. D. 368 (1876), where the indorsement of the payee was forged, the banker was held liable for paying it otherwise than through the banker to whom it was specially indorsed. Then came the Act of 1876, which introduced the "not negotiable" crossing, which had been substantially reproduced in the Act of 1882 and the present Act.

Although the crossing of cheques was not recognized in practice or in legislation in Canada, yet the Imperial Act, making the obliteration or alteration of the crossing a felony, was copied into our Forgery Act of 1869, and became section 31 of R. S. C. (1886) ch. 165. Even the words "and company" and "banker" were retained. In the Criminal Code, R. S. C. ch. 146, by section 468 (*r*), the forgery of a cheque renders the person found guilty liable to imprisonment for life, but obliterating or altering the crossing is not made a special offence.

The practice of crossing cheques has not been adopted in the United States.

168. General crossing.—Where a cheque bears across its face an addition of—

(a) The word “bank” between two parallel transverse lines, either with or without the words “not negotiable;” or—

(b) Two parallel transverse lines simply, either with or without the words “not negotiable;” such addition constitutes a crossing, and the cheque is crossed generally.

2. Special crossing.—Where a cheque bears across its face an addition of the name of a bank, either with or without the words “not negotiable,” that addition constitutes a crossing, and the cheque is crossed specially and to that bank. 53 V., c. 33, s. 75; Imp. Act, s. 76.

As already stated, this part of the Act does not apply to cheques on private bankers, nor can a cheque on an incorporated bank be crossed in favour of a private banker, or if crossed generally, be presented through him.

Where the drawer of a cheque made it payable to the order of M., and crossed it “Account of M., National Bank,” and gave it to M., who indorsed it to the National Bank, it was held that the bank could recover from the drawer, for these words, even assuming that section 8 of the Bills of Exchange Act applies to cheques, do not prohibit transfer, or indicate an intention that it should not be transferred; and that probably the only way to make a cheque not transferable would be to comply with the provisions of this section: *National Bank v. Silke*, [1891] 1 Q. B. 435.

169. Crossing by drawer, etc.—A cheque may be crossed generally or specially by the drawer.

2. Where a cheque is uncrossed, the holder may cross it generally or specially.
3. Where a cheque is crossed generally, the holder may cross it specially;
4. Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."
5. Where a cheque is crossed specially the bank to which it is crossed may again cross it specially, to another bank for collection.
6. Where an uncrossed cheque, or a cheque crossed generally, is sent to a bank for collection, it may cross it specially.

The "holder" of a cheque is the payee or indorsee if it is payable to order, provided he is in possession of it. If it is payable to bearer, it is the person who is in possession of it. Bank here means an incorporated bank or savings bank doing business in Canada.

7. A crossed cheque may be reopened or uncrossed by the drawer writing between the transverse lines, and initialling the same, the words "pay cash." 53 V., c. 33, s. 76; Imp. Act, s. 77.

This is not in the Imperial Act, but is in accordance with English custom: Chalmers, p. 256. It is the drawer alone who can obliterate the crossing. See the next section.

- 170. Crossing is material** — A crossing authorized by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorized by this Act, to add to or alter the crossing. 53 V., c. 33, s. 77; Imp. Act, s. 78.

A material alteration voids a cheque except as to a party who has made, authorized or assented to it, and except as to indorsers subsequent to the alteration: sec. 145.

In England an unauthorized obliteration or alteration is forgery: 24-25 Vict. ch. 98, secs. 25 and 39. This was copied in our Canadian criminal law, and became R. S. C. (1886), ch. 165, sec. 31, but it is the English crossing that is there referred to, and declared to be a felony. That section is not applicable to the crossing authorized by the Canadian Act.

If the obliteration, addition or alteration does not amount to forgery, it would come under section 164 of the Criminal Code, R. S. C. ch. 146, which makes any person who, without lawful excuse, disobeys an Act of Parliament, guilty of an offence, and liable to one year's imprisonment.

171. Duties of a bank.—Where a cheque is crossed specially to more than one bank, except when crossed to another bank as agent for collection, the bank on which it is drawn shall refuse payment thereof. 53 V., c. 33, s. 78; Imp. Act, s. 79.

This section would prevent the thief or a finder of a specially crossed cheque, or any holder subsequent to him, from crossing the cheque a second time and so getting paid through another bank.

The bank incurs no liability by such refusal, as the holder has no action on an unaccepted cheque. The next section gives a remedy to the true owner against a bank which improperly pays a crossed cheque.

172. Liability of bank for improper payment.—Where the bank on which a cheque so crossed is drawn, nevertheless pays the same, or pays a cheque crossed generally otherwise than to a

bank, or if crossed specially, otherwise than to the bank to which it is crossed, or to the bank acting as its agent for collection, it is liable to the true owner of the cheque for any loss he sustains owing to the cheque having been so paid: Provided, that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorized by this Act, the bank paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorized by this Act, and of payment having been made otherwise than to a bank or to the bank to which the cheque is or was crossed, or to the bank acting as its agent for collection, as the case may be. 53 V., c. 33, s. 78; Imp. Act, s. 79.

173. Protection to bank and drawer.—Where the bank, on which a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a bank, or, if crossed specially, to the bank to which it is crossed, or to a bank acting as its agent for collection, the bank paying the cheque, and if the cheque has come into the hands of the payee, the drawer shall respectively be entitled to the same rights and be placed in the same position as if

payment of the cheque had been made to the true owner thereof. 53 V., c. 33, s. 79; Imp. Act, s. 80.

This section gives to a bank on which a cheque is drawn the protection, in the case of a crossed cheque, which our Parliament refused to give it as to demand bills and ordinary cheques by striking out of the bill the clause corresponding to section 60 of the Imperial Act. On the other hand, it furnishes to the other parties to a cheque a strong reason for objecting to the crossing of a cheque. If a crossed cheque which has not been made "not negotiable" is lost or stolen before it reaches the hands of the payee, and the bank pays it in good faith and without negligence even upon a forged indorsement, the drawer has no recourse against the bank which has paid or the bank which has collected, but can only look to the guilty party or some subsequent holder. See *Ogden v. Benas*, L. R. 9 C. P. 513 (1874); *Patent Safety Gun Cotton Co. v. Wilson*, 49 L. J. C. P. 713 (1880); sec. 175. If it is lost or stolen after reaching the hands of the payee, and is paid in like manner, the drawer is released, but the payee, indorsee, or holder who has lost the bill, or from whom it has been stolen, is in the same position as the drawer in the case just mentioned.

The payee of a crossed cheque specially indorsed it to plaintiffs and posted it to them. A stranger having obtained possession of it during transmission obliterated the indorsement to plaintiffs, and having specially indorsed it to himself, presented it at defendants' bank and requested them to collect it for him. They did so and handed him the money. In an action for conversion defendants were held liable for the amount of the cheque. *Kleinwort v. Comptoir National d'Escompte*, [1894] 2 Q. B. 157.

A cheque on defendants' bank in London in favour of plaintiff was crossed generally. The indorsement was forged, and a person purporting to be the last indorsee,

and not a customer of the bank, presented it at defendants' branch in Paris and was paid. It was forwarded to London and credited to the Paris branch. It was held that English law governed, and that the bank was liable to plaintiff: *Lacave v. Credit Lyonnais*, [1897] 1 Q. B. 148.

174. Effect on holder.—Where a person takes a crossed cheque which bears on it the words “not negotiable,” he shall not have and shall not be capable of giving a better title to the cheque than that which had the person from whom he took it. 53 V., c. 33, s. 80; Imp. Act, s. 81.

Making a cheque “not negotiable” puts it on the same footing as an overdue bill, so that any holder takes it subject to the equities attaching to it, and no person can become a holder in due course. If such a cheque should be lost or stolen the person receiving the money from the collecting bank would be liable in any event.

Where a cheque crossed “not negotiable” was drawn in favour of a firm, and one partner, S., in fraud of plaintiff, his co-partner, indorsed it to defendant, who got it cashed for S., defendant was held liable to the co-partner, who under the partnership articles was entitled to the cheque: *Fisher v. Roberts*, 6 T. L. R. 354 (1890). See *National Bank v. Silke*, [1891] 1 Q. B. 435.

175. When bank not liable.—Where a bank, in good faith and without negligence, receives for a customer payment of a cheque crossed generally or specially to itself, and the customer has no title, or a defective title thereto, the bank shall not incur any liability to the true owner of the cheque by reason only of having received such payment. 53 V., c. 33, s. 81; Imp. Act, s. 82.

Section 173 relieves the bank on which the crossed cheque is drawn; this section, the bank which collects it. If it be indorsed "per proc." and the banker makes no inquiry as to the authority to so indorse, this may be negligence: *Bissell v. Fox*, 53 L. T. N. S. 193; 1 T. L. R. 452 (1885). See *Mathiessen v. London & County Bank*, 5 C. P. D. 7 (1879); *Bennett v. London & County Bank*, 2 T. L. R. 765 (1886). For an illustration of negligence desentitling a bank to the benefit of this section, see *Hannan's Lake View Central v. Armstrong*, 16 T. L. R. 236 (1900).

Where a customer's account is overdrawn, a banker collecting a crossed cheque, and placing the proceeds to his credit, is within the section: *Clarke v. London & County Banking Co.*, [1897] 1 Q. B. 552.

A railway company drew an order in the form of a cheque on a bank for £69, with this clause added: "Provided the receipt form at foot hereof is duly signed, stamped and dated." The order was crossed generally, and was stolen and plaintiff's name forged to the receipt and indorsement. Defendants received it in good faith from a customer and collected it. Held, that it was not a cheque, being conditional, and the bank was not protected: *Bavins v. South Western Bank*, [1900] 1 Q. B. 270.

The word "customer" implies something of use and habit. Where the only transaction between an individual and a bank is the collection of a crossed cheque, such individual is not a customer of the bank, and if he has no title the bank is not protected: *Matthews v. Brown*, 63 L. J. Q. B. 494 (1894); (reported *Matthews v. Williams*, 10 R. 210); *Lacave v. Credit Lyonnais*, [1897] 1 Q. B. 148.

To make a person a "customer" of the bank within the meaning of this section, there must be some sort of account, either a current or a deposit account, or some

similar relation. A person obtained from the drawee a cheque crossed generally and marked "not negotiable" and took it to a bank which, at his request, paid part of the amount of the cheque into the account of one of its customers and handed the balance to him. After the bank had received payment of the cheque from the bank on which it was drawn, the fraud was discovered, and the drawer sued the collecting bank. The latter received the payment in good faith and without negligence, and had for years been cashing cheques for the same person in like manner, but he had no account with them. Held, that he was not a customer, and the collecting bank was not protected: *Great Western Ry. Co. v. London & County Banking Co.*, [1901] A. C. 414.

Two banks credited a customer with the amounts of cheques as soon as they were handed in to his account and allowed him to draw against the amounts so credited before the cheques were cashed. It was held that the protection of this section did not apply to such a case, as the banks received the amounts for themselves and not for the customer: *Capital & Counties Bank v. Gordon*, and *London City & Midland Bank v. Gordon*, [1903] A. C. 240. To overcome the effect of these decisions the Imperial Act was amended by chapter 17 of 6 Edw. VII., providing that a banker receives payment of a crossed cheque within the meaning of section 82, notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof. The Canadian Act has not been amended, doubtless because crossed cheques are not in general use here as in England. This case was considered in *The Bank of Montreal v. The King*, 38 S. C. R., at p. 277 (1907), and in *Ross v. Chandler*, 19 O. L. R., at p. 596 (1909).

A clerk of the plaintiffs by fraud induced them to sign cheques crossed generally in favour of certain persons. He then forged the indorsement of the payees, and deposited the cheques in the defendant bank where he had an account. The latter credited him the amount

in its books, crossed the cheques specially, and had them cashed. It then entered the amount in his pass-book, and allowed him to draw against it. Held, that the bank was protected under section 82: *Akrokerri Mines v. Economic Bank*, [1904] 2 K. B. 465.

In another case arising before the passing of the amending Act 6 Edw. VII., ch. 17, it was held by Channel, J., that a banker does not lose the protection of section 82 merely because, before a crossed cheque paid in by a customer is cleared, he makes a credit entry in the bank's books or in the pass-book not communicated to the customer. It may be negligence on the part of the banker to receive payment for a customer of a crossed cheque marked "account of payee," where the banker has information which may lead him to think that the account into which he is paying the amount of the cheque is not the payee's account: *Bevan v. The National Bank*, 23 T. L. R. 65 (1906).

APPENDIX.

9-10 EDWARD VII. CHAP. 14.

An Act respecting the Currency.

[Assented to 4th May, 1910.]

HIS Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

SHORT TITLE.

1. This Act may be cited as *The Currency Act, 1910*.

DENOMINATIONS AND STANDARDS.

2. The denominations of money in the currency of Canada, shall be dollars, cents and mills,—the cent being one-hundredth part of a dollar, and the mill one-tenth part of a cent.

The decimal system was introduced into the old province of Canada by chapter 18 of the statutes of 1857, and came into force January 1st, 1858; into Nova Scotia by chapter 3 of 1860, coming into force, July 1st, 1860; and into New Brunswick by chapter 48 of 1860, coming into force, November 1st, 1860.

Canada and New Brunswick adopted the American gold standard by which a pound sterling was equal to \$4.86 $\frac{2}{3}$; Nova Scotia made a pound sterling equal to \$5.

In 1871, by chapter 4, the currency of Nova Scotia was assimilated to that of the rest of Canada.

3. The standard for gold coins of the currency of Canada, shall be such that of one thousand parts by weight, nine hundred shall be of fine gold and one hundred of alloy; and the standard for silver coins of such currency shall be such that of one thousand parts by weight nine hundred and twenty-five shall be of fine silver and seventy-five of alloy.

COINS.

4. Gold, silver and bronze coins, struck by the authority of the Crown for circulation in Canada, of the respective denominations mentioned in the schedule to this Act, and of the standard weight and fineness therein set out, shall be equal to and pass current for the respective sums in the currency of Canada following, to wit: for twenty dollars, ten dollars, five dollars, two and one-half dollars, one dollar, fifty cents, twenty-five cents, ten cents, five cents and one cent.

2. In the making of such coins a remedy (or variation from the standard weight and fineness specified in the schedule hereto), shall be allowed of an amount not exceeding the amount specified in that schedule.

3. If any coin of gold, silver, or bronze, but of any other denomination than that of the coins mentioned in schedule hereto, is hereafter coined under the provisions of this Act, such coin shall be of the same fineness as is fixed for coins of like material by that schedule, and shall be of a weight bearing the same proportion to the weight specified in that schedule as the denomination of such coin bears to the denominations or denomination of coin of like material mentioned in that schedule; and in the making of such coin a remedy shall be allowed of such amount as, having regard to the remedy assigned in that schedule to coins of like material, may be fixed and determined by proclamation under this Act; and such coin, if of gold, shall be subject to such provision as to least current weight as may be fixed and determined by proclamation under this Act, regard being had to the least current weight assigned in that schedule to the respective gold coins mentioned therein.

5. All coins of the currency of Canada which may be made pursuant to the provisions of this Act, shall subject to any regulations and conditions which may be made by the Master of His Majesty's Royal Mint in England, be coined at the Ottawa Branch of the Royal Mint;

but if for any reason such coins cannot be made at the said branch mint as required, the Governor in Council may authorize the making of such coins at His Majesty's Royal Mint or at any other branch thereof.

The establishment of a branch of the Royal Mint at Ottawa was authorized by R. S. C. ch. 26, which was amended by chapter 31 of 1913.

It was brought into operation on the 1st of January, 1908, by an Imperial Order in Council of the 2nd of November, 1907: Stat. of Can. 1908, p. xlviii.

6. The Minister of Finance may from time to time issue out of the Consolidated Revenue Fund such sums as may be necessary for the purchase of bullion in order to provide supplies of coin for the public service.

7. The sums received in payment for coin produced from bullion purchased under the next preceding section shall be paid into the Consolidated Revenue Fund.

LEGAL TENDER.

8. A tender of payment of money, if made in coins, which have been made in accordance with the provisions of this Act, and have not been called in under any proclamation made in pursuance of this Act, and have not become diminished in weight, by abrasion through ordinary and legitimate use, so as to be of less weight than the current weight, that is to say, than the weight (if any) specified as the least current weight in the schedule hereto, or less than such weight as may be declared by any proclamation made in pursuance of this Act, shall be a legal tender,—

(a) in the case of gold coins, for payment of any amount;

(b) in the case of silver coins, for a payment of an amount not exceeding ten dollars, but for no greater amount;

(c) in the case of bronze coins, for a payment of an amount not exceeding twenty-five cents, but for no greater amount.

2. The holder of the notes of any person to the amount of more than ten dollars shall not be bound to receive more than that amount in such silver coins in payment of such notes, if presented for payment at one time, although any of such notes is for a less sum.

3. Nothing in this Act shall prevent any paper currency which under any Act or otherwise is a legal tender from being a legal tender.

9. The British sovereign of the weight and fineness prescribed by the laws of the United Kingdom at the date of the passing of this Act, and which is not of less weight than the current weight specified as the least current weight at which it is a legal tender in the United Kingdom, shall pass current and be a legal tender in Canada for four dollars and eighty-six cents and two-thirds of a cent of the currency of Canada; and any other gold coins made at His Majesty's Royal Mint or at any branch thereof, and current in the United Kingdom, being a multiple or division of the sovereign shall, subject to corresponding current weight specifications, pass current and be a legal tender in Canada for proportionate sums in the currency of Canada.

10. The Governor in Council may, by proclamation, from time to time, fix the rates at which any foreign gold coins of the description, date, weight and fineness mentioned in such proclamation shall pass current and be a legal tender in Canada: Provided that until it is otherwise ordered by any such proclamation the gold coins of the United States of America hereinafter mentioned, that is to say the half eagle or five-dollar piece, the eagle or ten-dollar piece and the double eagle or twenty-dollar piece, coined after the eighteenth day of January, one thousand eight hundred and thirty-seven, and while the standard of fineness for gold coins then fixed by the laws

of the said United States remains unchanged, and weighing respectively one hundred and twenty-nine grains, two hundred and fifty-eight grains, and five hundred and sixteen grains, subject to the provisions of the laws of the said United States with respect to such coins as to tolerance or remedy and as to the reduction in weight by abrasion through ordinary and legitimate use below the said respective weights, in so far as such provisions prescribe the conditions under which the said coins shall be a legal tender in the said United States, and so long as such coins shall be receivable at their nominal value by the Treasury of the said United States and its offices, shall pass current and be a legal tender in Canada for five dollars, ten dollars and twenty dollars, respectively, in the currency of Canada.

11. The silver, copper or bronze coins heretofore struck by authority of the Crown for circulation in the provinces of Ontario, Quebec and New Brunswick under the Acts at the time in force in the said provinces respectively, and such silver, copper or bronze coins as, before the passing of this Act, have been struck by the same authority for circulation in Canada under the Acts at the time in force in Canada, shall be current and a legal tender throughout Canada at the rates in the said currency of Canada assigned to them respectively by the said Acts, and under the like conditions and provisions.

12. No other silver, copper or bronze coins than those which the Crown has heretofore caused to be struck or may hereafter cause to be struck for circulation in Canada, or in some province thereof, shall be a legal tender in Canada.

13. The stamp of the year on any foreign coin made current by this Act, or any proclamation issued under it, shall establish *prima facie* the fact of its having been coined in that year; and the stamp of the country on any foreign coin shall establish *prima facie* the fact of its being of the coinage of such country.

14. No coin which has been bent or mutilated, or has been defaced by the stamping or engraving thereon of any name, word, or mark, whether such coin is or is not thereby diminished or lightened, and no coin which has in any way been reduced in weight, except by abrasion through ordinary and legitimate use, shall pass current or be a legal tender.

ACCOUNTS, DEBTS AND OBLIGATIONS.

15. All public accounts throughout Canada shall be kept in the currency of Canada; and in any statement as to money or money value, in any indictment or legal proceeding, the same shall be stated in such currency.

2. Every contract, sale, payment, bill, note, instrument, and security for money, and every transaction, dealing, matter and thing relating to money, or involving the liability to pay any money, which was made, executed or entered into, done or had on or subsequent to the first day of July, one thousand eight hundred and seventy-one, and before the coming into force of this Act, shall be deemed to have been and be, so far as anything remains to be or may be executed, done or had thereunder, as if the same was originally made, executed, done or had according to the coins made for circulation in Canada and which are legal tender in Canada in pursuance of this Act, unless the same was made, executed, entered into, done or had according to the currency of Great Britain or of some British possession or of some foreign state.

3. Every contract, sale, payment, bill, note, instrument and security for money, and every transaction, dealing, matter and thing whatever relating to money, or involving the payment or the liability to pay any money, which is made, executed or entered into, done or had, shall be made, executed, entered into, done and had according to the coins made for circulation in Canada, and which are current and legal tender in pursuance of this Act,

unless the same be made, executed, entered into, done or had, according to the currency of Great Britain or of some British possession or some foreign state.

16. All sums mentioned in dollars and cents in *The British North America Act, 1867*, and in all Acts of the Parliament of Canada shall, unless it is otherwise expressed, be understood to be sums in the currency of Canada.

17. All sums of money payable on and after the first day of July, one thousand eight hundred and seventy-one, to the Crown, or to any person, under any Act or law in force in Nova Scotia, passed before the said day, or under any bill, note, contract, agreement or other document or instrument, made before the said day in and with reference to that province, or made after the said day out of Nova Scotia and with reference thereto, and which were intended to be, and but for such alteration would have been payable in the currency of Nova Scotia, as fixed by law previous to the fourteenth day of April, one thousand eight hundred and seventy-one, shall hereafter be represented and payable, respectively, by equivalent sums in the currency of Canada, that is to say, for every seventy-five cents of Nova Scotia currency, by seventy-three cents of the currency of Canada, and so in proportion for any greater or less sum; and if in any such sum there is a fraction of a cent in the equivalent in the currency of Canada, the nearest whole cent shall be taken.

18. Any debt or obligation contracted before the first day of July, in the year one thousand eight hundred and eighty-one, in the currency then lawfully used in the province of British Columbia, or in the province of Prince Edward Island, shall, if payable thereafter, be payable by an equivalent sum in the currency of Canada.

DOMINION AND BANK NOTES.

19. No Dominion note or bank note payable in any other currency than the currency of Canada shall be issued or re-issued by the Government of Canada, or by

any bank (except as otherwise provided by *The Bank Act*), and all such notes issued before the first day of July one thousand eight hundred and seventy-one which are outstanding and legal obligations shall be redeemed, or notes payable in the currency of Canada shall be substituted or exchanged for them.

2. The respective sums which Dominion notes and bank notes, now in circulation issued on or after the first day of July, one thousand eight hundred and seventy-one, and before the coming into force of this Act, purport to be obligations to pay, shall be deemed to be sums in the currency of Canada as by this Act established.

POWERS OF THE GOVERNOR IN COUNCIL.

20. The Governor in Council may from time to time by proclamation do all or any of the following things:—

(a) Determine the dimensions of and designs for any coin;

(b) In addition to the denominations of coins mentioned in the schedule hereto, determine the denominations of other coins to be coined and, subject to the provisions of this Act, the remedy and least current weight therefor:

(c) Diminish the amount of remedy allowed by the schedule hereto in the case of any coin;

(d) Determine the weight, not being less than the weight (if any) specified in the schedule hereto, below which a coin, when diminished in weight by abrasion through ordinary and legitimate use, is not to be deemed a current or legal tender;

(e) Make regulations under which the Minister of Finance may redeem silver, copper or bronze coins issued for circulation in Canada, which by reason of abrasion through ordinary and legitimate use are no longer fit for circulation;

(f) Call in coins of any date or denomination;

(g) Revoke or alter any proclamation previously made.

2. Every such proclamation shall be published in *The Canada Gazette* and shall thereupon come into operation on the date of such publication, and shall have effect as if it were enacted in this Act.

EXAMINATION AND TEST OF COINS.

21. For the purpose of ascertaining that coins of the currency of Canada issued from the Ottawa Branch of the Royal Mint have been coined in accordance with the provisions of this Act, the Governor in Council shall nominate and appoint competent persons, not less than three, who shall meet at least once in each year, as assay commissioners, to examine and test, in the presence of the proper officers of the Ottawa Branch of the Royal Mint and of the officers attending pursuant to any regulations made hereunder, the fineness and weight of the coins reserved for this purpose.

2. The Governor in Council may, from time to time, make regulations respecting the proceedings at and the conduct of such examination and test, and all matters incidental thereto, and in particular respecting the following matters, namely,—

(a) the time and place of examination and test:

(b) the setting apart out of the coins issued by the said branch mint of certain coins for examination and test; and the custody and production of the coins so set apart, and the production of the standard weights and trial plates hereinafter mentioned;

(c) the attendance of one or more officers of the Department of Finance and of one or more officers of the Department of Inland Revenue thereat;

(d) the recording and publication of the findings of the commissioners as the result of such examination and test, and the proceedings (if any) to be taken in consequence thereof.

3. Every such regulation shall come into operation on the date therein in that behalf mentioned, and shall have effect as if it were enacted in this Act, but may be revoked or altered by any subsequent regulation under this section.

22. The Dominion standard troy ounce, made of platinum-iridium now in the custody of the Minister of Inland Revenue, shall be the standard for regulating the weight of such currency, and the Minister of Inland Revenue shall cause weights of each denomination of coin made under this Act to be made and duly verified, and these weights, when approved by the Governor in Council, shall be the standard weights for determining the justness of the weight of and for weighing such coin.

2. The Minister of Inland Revenue shall, for the purpose of such examination and test, procure such standard weights, multiples and divisions in weight of such standard troy ounce, and such balance as may be necessary for the purpose of such examination and test.

3. The Minister of Inland Revenue shall from time to time, when necessary, cause trial plates of pure gold and of pure silver to be made and duly verified, and such trial plates shall be used for determining the justness of the gold and silver coins examined and tested under the provisions hereof.

4. Such standard weights and trial plates shall, except as may be provided by any regulations made hereunder, be in the custody of the Minister of Inland Revenue, to be kept in such place and in such manner as the Minister of Inland Revenue may direct.

EXPENSES INCIDENT TO ADMINISTRATION.

23. The costs, charges and expenses incident to the carrying out of the provisions of this Act, including the

examination and test, procuring standard weights, trial plates and balances, shall be payable out of the Consolidated Revenue Fund.

WHEN COUNTERFEIT OR DIMINISHED COIN TO BE BROKEN.

24. Every officer employed in the collection of the revenue in Canada shall cut, break or deface, or cause to be cut, broken or defaced, every piece of counterfeit or unlawfully diminished gold or silver coin which is tendered to him in payment of any part of the revenue of Canada.

REPEAL.

25. *The Currency Act*, chapter 25 of the Revised Statutes, 1906, is repealed.

SCHEDULE.

Denomination of coin.	Standard weight.	Least current weight.	Standard fineness.	Remedy allowance.	
				Weight per piece.	Millesima fineness.
	Grains.	Grains.		Grains.	
<i>Gold:—</i>					
Twenty dollar ..	516	513.42	{ Nine-tenths fine gold, one-tenth alloy ; or millesimal fineness, 900 .....	.50	1
Ten dollar	258	256.71		.40	1
Five dollar	129	128.355		.25	1
Two and one-half dollar	64.5	64.178		.20	1
<i>Silver:—</i>					
One dollar	360	.....	{ Thirty-seven-fortieths fine silver, three- fortieths alloy ; or millesimal fineness, 925	1.50	4
Fifty cent.	180	.....		1.00	4
Twenty-five cent	90	.....		.60	4
Ten cent.	36	.....		*2.50	4
Five cent.	18	.....		†3.00	4
<i>Bronze:—</i>					
Cent.	87.5	.....	Mixed metal, copper, tin and zinc	‡140.00	...

* This remedy is on a group of one dollar's worth, ten pieces.

† This remedy is on a group of one dollar's worth, twenty pieces.

‡ This remedy is on a group of eighty pieces weighed against a weight of one pound avoirdupois.

Revised Statutes of Canada, 1906.

CHAPTER 27.

An Act respecting Dominion Notes.

SHORT TITLE.

1. This Act may be cited as the Dominion Notes Act.

INTERPRETATION.

2. In this Act, unless the context otherwise requires,—
 - (a) “specie” means coin current by law in Canada, at the rates and subject to the provisions of the law in that behalf, or bullion of equal value according to its weight and fineness;
 - (b) “Dominion notes” means notes of the Dominion of Canada issued and outstanding under the authority of this Act. 3 Ed. VII., c. 43, ss. 1 and 2.

ISSUE AND REDEMPTION.

3. Dominion notes may be issued and outstanding at any time to any amount, and such notes shall be a legal tender in every part of Canada except at the offices at which they are redeemable. 3 Ed. VII., c. 43, s. 2.

4. Dominion notes shall be of such denominational values as the Governor in Council determines, and shall be in such form, and signed by such persons and in such manner, by lithograph, printing or otherwise, as the Minister of Finance from time to time directs.

2. Such notes shall be redeemable in specie on presentation at branch offices established or at banks with which arrangements are made for the redemption thereof as hereinafter provided. 3 Ed. VII., c. 43, s. 3.

5. The Minister of Finance shall always hold as security for the redemption of Dominion notes up to and including thirty million dollars, issued and outstanding at any one time, an amount equal to not less than twenty-five per centum of the amount of such notes in gold, or in gold and securities of Canada, the principal and interest of which are guaranteed by the Government of the United Kingdom.

2. The amount so held in gold shall be not less than fifteen per centum of the amount of such notes so issued and outstanding.

3. As security for the redemption of Dominion notes issued in excess of thirty million dollars the Minister shall hold an amount in gold equal to such excess. 3 Ed. VII., c. 43, s. 4.

6. In case the amount held in accordance with the provisions of the Act as security for the redemption of Dominion notes is not sufficient to pay the Dominion notes presented for redemption, or in case the amount so held is reduced below the amount required by this Act to be held, the Governor in Council may raise, by way of loan, temporary or otherwise, such sums of money as are necessary to pay such notes or to provide the amount required to be held as security for the redemption of Dominion notes issued and outstanding. 3 Ed. VII., c. 43, s. 5.

PROCEEDS AND EXPENSES.

7. The proceeds of Dominion notes so issued shall form part of the Consolidated Revenue Fund of Canada, and all expenses incurred or required to be paid in connection with the engraving, printing or preparation of such notes, or the signing, issue or redemption thereof, shall be paid out of the said fund. 3 Ed. VII., c. 43, s. 5.

MONTHLY STATEMENT.

8. The Minister of Finance shall publish monthly in the *Canada Gazette* a statement of the amount of Dominion notes outstanding on the last day of the preceding month, and of the gold and guaranteed debentures then held by him for securing the redemption thereof. 3 Ed. VII., c. 43, s. 6.

AGENCIES FOR REDEMPTION.

9. The Governor in Council may establish branch offices of the Department of Finance at Toronto, Montreal, Halifax, St. John, Winnipeg, Victoria and Charlottetown, for the redemption of Dominion notes, or may make arrangements with a chartered bank at any of the said places for the redemption thereof.

2. Every assistant receiver general appointed at any of the said places under Part II. of the Savings Bank Act shall be an agent for the issue and redemption of such notes. 3 Ed. VII., c. 43, s. 7.

NOTES OF LATE PROVINCE OF CANADA.

10. Provincial notes under the Act of the late province of Canada, passed in the session held in the twenty-ninth and thirtieth years of Her late Majesty Queen Victoria's reign, chapter ten, intituled *An Act to provide for the issue of Provincial Notes*, shall be held to be notes of the Dominion of Canada, and shall be redeemable in specie on presentation at Toronto, Montreal, Halifax, or St. John, according as the same are respectively made payable, and shall be legal tender except at the offices at which they are so respectively made payable. 3 Ed. VII., c. 43, s. 8.

Canadian Bankers' Association.

63-64 VICTORIA, CHAPTER 93.

An Act to Incorporate the Canadian Bankers' Association.

[Assented to 7th July, 1900.]

Whereas the voluntary association now existing under the name of the Canadian Bankers' Association has, by its petition, prayed that it may be enacted as hereinafter set forth, and it is expedient to grant the prayer of the said petition. Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. Name.—There is hereby created and constituted a corporation under the name of “The Canadian Bankers' Association,” hereinafter called “the Association.”

2. How composed.—The Association shall consist of members and associates;

(a) The members, hereinafter referred to as members, shall be the banks named in the schedule to this Act, and such new banks hereafter incorporated by or under the authority of the Parliament of Canada as become entitled to carry on the business of banking in Canada, and to which the Bank Act in force at the time of its incorporation applies. Any bank to which the Bank Act applies, carrying on business in Canada, and not named in the schedule to this Act, shall on its own application at any time be admitted as a member of the Association by resolution of the executive council hereinafter named;

(b) The associates, hereinafter referred to as associates, shall be the bank officers who are associates of the voluntary association mentioned in the preamble at the time this Act is passed, and such other officers of the bank which are members of the Association as may be elected at a meeting of the executive council hereinafter named or at an annual meeting of the Association. Any associate may at any time by written notice to the president of the Association withdraw from the Association.

3. Ceasing to be a member.—Upon the suspension of payment of a bank being a member of the Association, such bank shall cease to be a member. Provided, however, that if and when such bank resumes the carrying on of its business in Canada it may again become a member of the Association.

4. Ceasing to be an associate.—Upon an associate ceasing to be an officer of a bank carrying on business in Canada, he shall at the end of the then current calendar year, cease to be an associate.

5. Objects and powers.—The objects and powers of the Association shall be, to promote generally the interests and efficiency of banks and bank officers, and the education and training of those contemplating employment in banks and for such purposes, among other means, to arrange for lectures, discussions, competitive papers and examinations on commercial law and banking, and to acquire, publish and carry on the “Journal of The Canadian Bankers’ Association.”

6. Sub-sections.—The Association may from time to time establish in any place in Canada a sub-section of the Association under such constitution and with such powers (not exceeding the powers of the Association), as may be thought best.

7. Clearing houses.—The Association may from time to time establish in any place in Canada a clearing house

for banks, and make rules and regulations for the operations of such clearing house; provided always, that no bank shall be or become a member of such clearing house except with its own consent, and a bank may after becoming such member at any time withdraw therefrom.

2. Regulations.—All banks, whether members of the Association or not, shall have an equal voice in making from time to time the rules and regulations for the clearing house; but no such rule or regulation shall have any force or effect until approved of by the Treasury Board.

8. Voting powers.—Members of the Association shall vote and act in all matters relating to the Association through their chief executive officers. For the purposes of this Act the chief executive officer of a member shall be its general manager or cashier, or in his absence the officer designated for the purpose by him, or in default of such designation the officer next in authority. Where the president or vice-president of a member performs the duties of a general manager or cashier he shall be the chief executive officer, and in his absence the officer designated for the purpose by him, and in default of such designation the officer next in authority to him. At all meetings of the Association each member shall have one vote upon each matter submitted for vote. The chairman shall, in addition to any vote he may have as chief executive officer or proxy, have a casting vote in case of a tie. Associates shall have only such powers of voting and otherwise taking part at meetings as may be provided by by-law.

9. Officers.—There shall be a president and one or more vice-presidents and an executive council of the Association, of which council five shall form a quorum unless the by-laws otherwise provide.

10. Officers continued.—The persons who are the president, vice-president and executive council of the voluntary association mentioned in the preamble at the

time this Act is passed, shall be the president, vice-president and executive council respectively of the Association, until the first general meeting of the Association or until their successors are appointed.

11. General meetings.—The first general meeting of the Association shall be held during the present calendar year at such time and place and upon such notice as the executive council may decide. Subsequent general meetings shall be held as the by-laws of the Association may provide, at least once in each calendar year.

12. Election of officers.—At the first general meeting and at each annual meeting thereafter the members of the Association shall elect a president, one or more vice-presidents and an executive council, all of whom shall hold office until the next annual general meeting or until their successors are appointed.

13. Executive officers.—The president, vice-presidents and executive council shall be chosen from among the chief executive officers of members of the Association.

14. Executive council.—Unless the by-laws otherwise provide, the executive council shall consist of the president and vice-presidents of the Association and fourteen chief executive officers, and five shall form a quorum for the transaction of business.

15. Dues.—Each member and associate shall from time to time pay to the Association for the purposes thereof such dues and assessments as shall from time to time be fixed in that behalf by the Association at any annual meeting, or at any special meeting called for the purpose, by a vote of not less than two-thirds of those present or represented by proxy.

16. By-laws.—The objects and powers of the Association shall be carried out and exercised by the executive

council, or under by-laws, resolutions, rules and regulations passed by it, but every such by-law, rule and regulation, unless in the meantime confirmed at a general meeting of the Association called for the purpose of considering the same, shall only have force until the next annual meeting, and in default of confirmation thereat shall cease to have force. Provided always, that any by-law, rule or regulation passed by the executive council may be repealed, amended, varied or otherwise dealt with by the Association at any annual general meeting or at a special general meeting called for the purpose.

2. Power of executive.—For greater certainty, but not so as to restrict the generality of the foregoing, it is declared that the executive council shall have power to pass by-laws, resolutions, rules and regulations, not contrary to law or to the provisions of this Act, respecting—

(a) Lectures, discussions, competitive papers, examinations;

(b) The journal of the Association;

(c) The sub-sections of the Association;

(d) Clearing houses for banks;

(e) General meetings, special and annual, of the Association and of the executive council, and the procedure and quorum thereat, including the part to be taken by associates and their powers of voting;

(f) Voting by proxy at meetings of the Association and of the executive council;

(g) The appointment, functions, duties, remuneration and removal of officers, agents and servants of the Association.

3. No by-law, resolution, rule or regulation respecting clearing houses, and no repeal, amendment, or variation of or other dealing with any such by-law, resolution, rule or regulation shall have any force or effect until approved of by the Treasury Board.

17. The provisions of the Companies Clauses Act, being chapter 118 of the Revised Statutes, shall not apply to the Association.

B Y - L A W S
OF THE
Canadian Bankers' Association.

(By-laws Nos. 13, 14, 15 and 16 were approved by the Dominion Treasury Board in May, 1901, in accordance with section 30 of the Bank Act Amendment Act, 1900, and sections 7 and 16 of the Act of 1900, incorporating the Canadian Bankers' Association.)

1. General meetings.—The annual general meetings of the Association shall be held on the second Thursday of the month of November in each year, at such hour and place as may be decided upon by the executive council of the Association from time to time. Special general meetings of the Association may be called at any time by the said executive council, and shall be called by the president or secretary-treasurer on the written requisition of at least five members of the Association.

The requisition (if any) for, and the notice of calling any special general meeting, shall specify therein the general nature of the business to be considered or transacted thereat. Special general meetings shall be held at such time, hour and place as shall be mentioned in the notice calling the same. Thirty days' notice shall be given of every general meeting of the Association whether annual or special. At any annual or special general meeting of the Association seven persons, duly representing members of the Association, shall form a quorum.

At any annual general meeting of the Association any business may be transacted thereat.

At any special general meeting of the Association only such business shall be transacted as is mentioned in the notice calling such special general meeting.

2. Election of officers.—At every annual general meeting, the members of the Association, through their representatives or proxies, shall elect from among the chief executive officers (as defined by charter of incorporation) of members of the Association, a president, four honorary vice-presidents, four vice-presidents, and fourteen councillors, all of whom shall hold office until the next annual general meeting, or until their successors are appointed, and may also elect honorary presidents of the Association, not exceeding three in number; who shall also hold office until the next annual general meeting after their election.

3. Executive council.—The executive council of the Association shall consist of the president and vice-presidents, and the said fourteen councillors aforesaid, and five shall form a quorum for the transaction of business.

The honorary presidents shall also have seats at the executive council, but shall have no vote thereat.

4. Voting at general meetings.—At all meetings of the Association each member shall have one vote upon each matter submitted for vote. The chairman shall, in addition to any vote he may have as chief executive officer or proxy, have a casting vote in case of a tie.

Each associate shall also have one vote on all subjects except the following, on which members only shall be permitted to vote:—

1. Election of officers.
2. Action relating to proposed legislation.
3. By-laws.
4. Adding to, or amending the charter.

5. All other subjects on which general action by the banks is contemplated.

5. Meetings of council.—The executive council may meet together for the despatch of business, adjourn and otherwise regulate its meetings, as it by resolution or otherwise may determine from time to time.

The secretary-treasurer shall at any time, at the request of the president or any vice-president or any other member of the executive council, convene a meeting of the council. Provided, however, that no business shall be transacted at a meeting called at the request of a member unless the notice calling the meeting specifies in some general terms that such business will be transacted thereat, but this provision shall not apply to any meeting called at the request of the president or any vice-president.

On all questions arising at any meeting of the executive council each member shall have one vote in addition to any vote he may have as proxy, and the chairman shall have in addition a casting vote.

6. Chairman.—At all meetings of the Association and of the executive council, the president, when present, shall be chairman, and in his absence one of the vice-presidents chosen by the members of the council then present; and in the absence of the president and vice-presidents, the members of the council then present may choose some one of their number to be chairman of such meeting.

7. Voting by proxy.—Any member, not represented at a meeting of the Association by one of the officers named in section 8 of the charter of incorporation, may vote by proxy; provided such proxy is held by an associate who is an assistant general manager, or assistant cashier, inspector or manager of any bank, or any branch thereof.

Any member of the executive council, when not present at any meeting thereof, may be represented thereat

by proxy, provided such proxy is held by such an associate as is before mentioned in this by-law. Proxies shall be in writing.

8. By-laws.—The executive council may from time to time repeal, amend or add to any of the by-laws of the Association, except those relating to dues, to the clearing house, to the curator and his duties, and to the circulation, but every such repeal, amendment or addition shall only have force until the next annual general meeting of the Association, and if not confirmed thereat shall thereupon cease to have force.

9. Secretary-treasurer and solicitor.—The said executive council shall have power from time to time to appoint a secretary-treasurer, who shall be an officer or ex-officer of a bank, and to remove him from office, and to fix his remuneration and the terms of his engagement.

The executive council shall also have power from time to time to appoint a solicitor or solicitors, and to fix their remuneration for either general or special services, and also to engage counsel where such services may be needed.

10. Sub-sections.—Existing sub-sections of the voluntary Association are hereby continued as, and constituted, sub-sections of the Association as incorporated. Sub-sections hereby or hereinafter constituted may pass by-laws for their guidance, subject always to the provisions of the charter of incorporation, and the by-laws of the Association.

The bankers' section of the Boards of Trade in the cities of Montreal and Toronto respectively, shall be empowered respectively to represent the Association in all matters connected with legislation in the Legislatures of Quebec and Ontario, respectively—it being understood that the respective sections will, as fully as possible, keep the president and the executive council of the Association advised on all points that may arise in connection with

the matters referred to, and will not make representations in the name of the Association contrary to the views of the executive council after such views have been expressed.

11. Journal, lectures, etc.—An editing committee appointed by the Association shall supervise the publication of the “Journal of the Canadian Bankers’ Association,” and the executive council shall appoint such other officers as it may deem necessary; and shall also make such provisions and arrangements from time to time as it deems proper, for lectures, discussions, competitive papers, and examinations.

12. (As amended in November, 1912). The dues or subscriptions payable to the Association by the members thereof shall be \$100 for each \$1,000,000 of paid-up capital or fraction thereof, as appearing in the return for the month of September in each year.

The dues or subscriptions payable to the Association by associates thereof shall be one dollar annually. Members’ and associates’ subscriptions shall be payable on or before the 1st February and 1st July respectively in each year.

13. (a) Monthly return.—A monthly return shall be made to the president of the Canadian Bankers’ Association by all banks doing business in Canada, whether members of the Canadian Bankers’ Association or not, in the form hereinafter set forth; said return shall be made up and sent in within the first fifteen days of each month, and shall exhibit the condition of the bank’s note circulation on the last juridical day of the month next preceding; and every such monthly return shall be signed by the chief accountant or acting chief accountant and by the president or vice-president, or by any director of the bank, and by the general manager, cashier, or other chief executive officer of the bank at its chief place of business. Every such monthly return which shows therein notes destroyed during such month, shall be accompanied

by a certificate or certificates in the form hereinafter set forth, covering all the notes mentioned as destroyed in such return, signed by at least three of the directors of the bank, and by the chief executive officer or some officer of the bank acting for him, stating that the notes mentioned in such certificate or certificates have been destroyed in the presence of and under the supervision of the persons respectively signing such certificate or certificates respectively.

FORM OF MONTHLY RETURN OF CIRCULATION ABOVE
MENTIONED.

CIRCULATION STATEMENT OF THE

(Here state name of bank)

for the month of19 ..

Credit Balance of Bank Note Accounts on last day of
preceding month (inclusive of unsigned notes).....\$

Add notes received from printers during month, viz.:

From.....\$

“\$

\$

\$

Less notes destroyed during month (as per certificate
herewith).....\$

Balance of Bank Note Accounts on last day of month....\$

Less notes on hand, viz.:

Signed\$

Unsigned\$

\$

Notes in circulation on last day of month.....\$

.....
Chief Accountant.

We declare that the foregoing return, to the best of our knowledge and belief, is correct, and shows truly and clearly the state and position of the Note Circulation of said Bank during and on the last day of the period covered by such return.

.....this.....day of.....19....

.....
President.

.....
General Manager.

FORM OF CERTIFICATE OF DESTRUCTION OF NOTES ABOVE MENTIONED.

Certificate of Destruction of Notes of the (here mention name of bank) accompanying monthly Circulation Statement for month of.....A.D., 19 ..

We, the undersigned, hereby certify that we have examined bank notes of this Bank amounting to \$.....consisting of the following, viz.: (here set out the denominations) and have burned and destroyed the same, and that the said notes so burned and destroyed by us are not included in any other Certificate of Destruction of Notes signed by us or any of us, or to the best of our knowledge and belief, by any other person to accompany the present or any monthly circulation statement made or to be made to the President of the Canadian Bankers' Association.

.....this.....day of.....19 ..

.....

.....

.....

Directors of the Bank.

.....

General Manager.

(b) **Bank of British North America.**—For all purposes of this by-law, the chief place of business of the Bank of British North America shall be the chief office of the said bank at the city of Montreal, in the Province of Quebec.

And in the case of the said Bank of British North America the said monthly circulation return shall be signed by the general manager's clerk, or acting general manager's clerk, and by the general manager or the acting general manager of the said bank; and the said certificate of destruction of notes shall be signed by the general manager or acting general manager, the inspector or assistant inspector, and the local manager of the Montreal branch, or the acting local manager of the Montreal branch of the said bank, instead of by the persons respectively hereinbefore directed to sign the said returns respectively.

(c) **Penalty for neglect.**—Every bank which neglects to make up and send in as aforesaid any monthly return

required by this by-law within the time by this by-law limited, shall incur a penalty of fifty dollars for each and every day after the expiration of such time during which the bank neglects so to make up and send in such return.

(d) **Inspection.**—The executive council of the Association shall have power, by resolution, at any time, to direct that an inspection shall be made of the circulation accounts of any bank by an officer or officers to be named in such resolution, and such inspection shall be made accordingly.

(e) **Inspection and report.**—Some person or persons appointed from time to time by the executive council of the Association shall, during the year 1901, and during every year thereafter, make inspection of the circulation accounts of every bank doing business in Canada, whether members of the Association or not, and shall report thereon to the council; and upon every such inspection all and every the officers of the bank whose circulation account shall be so inspected shall give and afford to the officer or officers making such inspection, all such information and assistance as he or they may require to enable him or them fully to inspect said circulation account, and to report to the council upon the same, and upon the means adopted for the destruction of the notes.

(f) **Collection of penalties.**—The amount of all penalties imposed upon a bank for any violation of this by-law shall be recoverable and enforceable with costs, at the suit of the Canadian Bankers' Association, and such penalties shall belong to the Canadian Bankers' Association for the uses of the Association.

(g) **Statement of circulation.**—The president of the Canadian Bankers' Association shall each month have printed and forwarded to the chief executive officer of every bank of Canada, subject to the Bank Act, whether a member of the Association or not, a statement of the

circulation returns of all the banks in Canada for the last preceding month as received by him.

(h) **Association defined.**—In this by-law it is declared for greater certainty that the Canadian Bankers' Association herein mentioned and referred to is the Association incorporated by special Act of Parliament of Canada, 63 and 64 Viet. chap. 93.

CURATOR.

14. Appointment, powers, etc.—Whenever any bank suspends payment, a curator, as mentioned in section 24 of the Bank Act Amendment Act, 1900, shall be appointed to supervise the affairs of such bank. Such appointment shall be made in writing by the president of the Association or by the person who, during a vacancy in the office of, or in the absence of, the president, may be acting as president of the Association.

If a curator so appointed dies, or resigns, another curator may be appointed in his stead in the manner aforesaid.

The executive council may, by resolution, at any time remove a curator from office and appoint another person curator in his stead.

A curator so appointed shall have all the powers and subject to the provisions of By-law No. 15, shall perform all the duties imposed upon the curator by the said Bank Act Amendment Act; he shall also furnish all such returns and reports, and give all such information touching the affairs of the suspended bank as the president of the Association or the executive council may require of him from time to time.

The remuneration of the curator for his services and his expenses and disbursements in connection with the discharge of his duties shall be fixed and determined from time to time by the executive council.

15. Advisory board.—Whenever a bank suspends payment and a curator is accordingly appointed, the president shall also appoint a local advisory board consisting of three members, selected generally as far as possible from among the general managers, assistant-general managers, cashiers, inspectors or chief accountants or branch managers of any bank at the place where the head office of such suspended bank is situated, and the curator shall advise from time to time with such advisory board, and it shall be his duty, before taking any important step in connection with his duties as curator, to obtain the approval of such advisory board thereto. With the sanction of such advisory board, he may employ such assistants as he may require for the full performance of his duties as curator.

CLEARING HOUSES.

16. Rules and regulations.—The rules and regulations contained in this by-law are made in pursuance of the powers contained in the Act to Incorporate the Canadian Bankers' Association, 63 & 64 Vict. chap. 93 (1900), and shall be adopted by, and shall be the rules and regulations governing all clearing houses now existing and established, or that may be hereafter established.

RULES AND REGULATIONS RESPECTING CLEARING HOUSES.

MADE IN PURSUANCE OF THE POWERS CONTAINED IN THE ACT TO
INCORPORATE THE CANADIAN BANKERS' ASSOCIATION.

1. Formation.—The chartered banks doing business in any city or town, or such of them as may desire to do so, may form themselves into a Clearing House. Chartered banks thereafter establishing offices in such city or town may be admitted to the Clearing House by a vote of the members.

2. Objects.—The Clearing House is established for the purpose of facilitating daily exchanges and settlements between banks. It shall not either directly or indirectly be used as a means of obtaining payment of any item, charge or claim disputed, or objected to. It is expressly agreed that any bank receiving exchanges through the Clearing House shall have the same rights to return any item, and

to refuse to credit any sum which it would have had were the exchanges made directly between the banks concerned, instead of through the Clearing House; and nothing in these or any future rules, and nothing done, or omitted to be done thereunder, and no failure to comply therewith shall deprive a bank of any rights it might have possessed had such rules not been made, to return any item or refuse to credit any sum; and payment through the Clearing House of any item, charge or claim shall not deprive a bank of any right to recover back the amount so paid.

3. Meetings.—The Annual Meeting of the members shall be held on such day in each year, and at such time and place as the members may fix by by-law. Special meetings may be called by the Chairman or Vice-Chairman whenever it may be deemed necessary, and the Chairman shall call a special meeting whenever requested to do so in writing by three or more members.

4. Voting.—At any meeting each member may be represented by one or more of its officers, but each bank shall have one vote only.

5. Board of Management.—At every Annual Meeting there shall be elected by ballot a Board of Management who shall hold office until the next Annual Meeting, and thereafter until their successors are appointed. They shall have the general oversight and management of the Clearing House. They shall also deal with the expenses of the Clearing House, and the assessments made therefor. In the absence of any member of the Board of Management he may be represented by another officer of the bank of which he is an officer.

6. Officers.—The Board of Management shall at their first meeting after their appointment, elect out of their own number a Chairman, a Vice-Chairman, and a Secretary-Treasurer, who shall perform the duties customarily appertaining to these offices.

The officers so selected shall be respectively the Chairman, Vice-Chairman, and Secretary-Treasurer of the Clearing House.

Should the bank of which the Chairman is an officer be interested in any matter, his powers and duties shall, with respect to such matter, be exercised by the Vice-Chairman, who shall also exercise the Chairman's duties and powers in his absence.

7. Meetings.—Meetings of the Board may be held at such times as the members of the same may determine. A special meeting shall be called by the Secretary-Treasurer on the written requisition of any member of the Clearing House for the consideration of any matter submitted by it, of which meeting 24 hours' notice shall be given, but if such meeting is for action under Rules 15 or 16, it shall be called immediately.

8. Expenses.—The expenses of the Clearing House shall be met by an equal assessment upon the members, to be made by the Board of Management.

9. Withdrawal.—Any bank may withdraw from the Clearing House by giving notice in writing to the Chairman or Secretary-Treasurer between the hours of 1 and 3 o'clock p.m., and paying its due proportion of expenses and obligations then due. Said retirement to take effect from the close of business of the day on which such notice is given. The other banks shall be promptly notified of such withdrawal.

10. Clearing Bank.—The Board of Management shall arrange with a bank to act as clearing bank for the receipt and disbursement of balances due by and to the various banks, but such bank shall be responsible only for the moneys and funds actually received by it from the debtor banks, and for the distribution of the same amongst the creditor banks, on the presentation of the Clearing House certificates properly discharged. The clearing bank shall give receipts for balances received from the debtor banks. The Board of Management shall also arrange for an officer to act as Manager of the Clearing House from time to time, but not necessarily the same officer each day.

11. Payment of Balances.—The hours for making the exchanges at the Clearing House, for the payment of the debit balances to the clearing bank, and for payment out of the balances due the creditor banks, shall be fixed by by-law under clause 17. On completion of the exchanges, the balances due to or by each bank shall be settled or declared by the Clearing House Manager, and if the clearing statements are readjusted under the provisions of these rules, the balances must then be similarly declared settled, and the balances due by debtor banks must be paid into the clearing bank, at or during the hours fixed by by-law as aforesaid, provided that no credit balance, or portion thereof, shall be paid until all debit balances have been received by the clearing bank. At Clearing Houses where balances are payable in money they shall be paid in legal tender notes of large denominations.

At Clearing Houses where balances are payable by draft should any settlement draft given to the clearing bank not be paid on presentation, the clearing bank shall at once notify in writing all the other banks of such default; and the amount of the unpaid draft shall be repaid to the clearing bank by the banks whose clearances were against the defaulting bank on the day the unpaid draft was drawn, in proportion to such balances. The clearing bank shall collect the unpaid draft, and pay the same to the other banks in the above proportion. It is understood that the clearing bank is to be the agent of the associated banks, and to be liable only for moneys actually received by it.

Should any bank make default in paying to the clearing bank its debit balance, within the time fixed by this rule, such debit balance and interest thereon shall then be paid by the bank so in default to the Chairman of the Clearing House for the time being.

and such Chairman and his successor in office from time to time shall be a creditor of and entitled to recover the said debit balances, and interest thereon from the defaulting bank. Such balances, when received by the said Chairman or his successor in office, shall be paid by him to the clearing bank for the benefit of the banks entitled thereto.

12. Objections to Statements.—In order that the clearing statements may not be unnecessarily interfered with it is agreed that a bank objecting to any item delivered to it through the Clearing House, or to any charge against it in the exchanges of the day, shall, before notifying the Clearing House Manager of the objection, apply to the bank interested for payment of the amount of the item or charge objected to, and such amount shall thereupon be immediately paid to the objecting bank. Should such payment not be made, the objecting bank may notify the Clearing House Manager of such objection and non-payment, and he shall thereupon deduct the said amount from the settling sheets of the banks concerned, and readjust the clearing statements and declare the correct balances in conformity with the changes so made, provided that such notice shall be given at least half an hour before the earliest hour fixed by by-law, as provided in clause 11, for payment of the balances due to the creditor banks. But notwithstanding that the objecting bank may not have so notified the Clearing House Manager, it shall be the duty under these rules of the bank interested to make such payment on demand therefor being made at any time up to 3 o'clock; provided, however, that if the objection is based on the absence from the deposit of any parcel or of any cheque or other item entered on the deposit slip, notice of such absence shall have been given to the bank interested before 12 o'clock noon, the whole, however, subject to the provisions of Rule No. 2.

13. Items Received in Trust.—All bank notes, cheques, drafts, bills and other items (hereafter referred to as "items") delivered through the Clearing House to a bank in the exchanges of the day, shall be received by such bank as a trustee only, and not as its own property, to be held upon the following trust, namely, upon payment by such bank at the proper hour to the clearing bank of the balance (if any) against it, to retain such items freed from said trust; and in default of payment of such balance, to return immediately and before 12.30 p.m., and said terms unmarked and unmutilated through the Clearing House to the respective banks, and the fact that any item cannot be so returned shall not relieve the bank from the obligation to return the remaining items, including the amount of the bank's own notes so delivered in trust.

Upon such default and return of said items, each of the other banks shall immediately return all items which may have been

received from the bank so in default, or pay the amount thereof to the defaulting bank through the Clearing House. The items returned by the bank in default shall remain the property of the respective banks from which they were received, and the Clearing House Manager shall adjust the settlement of balances anew.

A bank receiving through the Clearing House such items as aforesaid, shall be responsible for the proper carrying out of the trust upon which the same are received as aforesaid, and shall make good to the other banks respectively all loss and damage which may be suffered by the default in carrying out such trust.

14. Provision for Default. — In the event of any bank receiving exchanges through the Clearing House making default in payment of its debit balance (if any) then in lieu of its returning the item received by it as provided by Rule 13, the Board of Management may require the banks to which the defaulting bank, on an account being taken of the exchanges of the day between it and the other banks, would be a debtor, in proportion to the amounts which, on such accounting, would be respectively due to them, to furnish the Chairman of the Clearing House for the time being with the amount of the balance due by the defaulting bank, and such amount shall be furnished accordingly, and shall be paid by the Chairman to the clearing bank, which shall then pay over to the creditor banks the balances due to them in accordance with Rule 11. The said funds for the Chairman shall be furnished by being deposited in the clearing bank for the purpose aforesaid. The defaulting bank shall repay to the Chairman for the time being, or to his successor in office, the amount of such debit balance and interest thereon, and the said Chairman, and his successor in office, shall be entitled to recover the same from the defaulting bank. Any moneys so recovered shall be held in trust for and deposited in the clearing bank for the benefit of the banks entitled thereto.

15. Re-adjustment of Balances.—If a bank neglects or refuses to pay its debit balance to the clearing bank, and if such default be made not because of inability to pay, the Board of Management may direct that the exchanges for the day between the defaulting bank and each of the other banks be eliminated from the Clearing House Statements, and that the settlements upon such exchanges be made directly between the banks interested, and not through the Clearing House. Upon such direction being given the Clearing House Manager shall comply therewith and adjust the settlement of balances anew, and the settlements of the exchanges so eliminated shall thereupon be made directly between the banks interested.

16. Suspension of Clearings.—Should any case arise to which, in the opinion of the Board of Management, the foregoing rules are inapplicable, or in which their operation would be inequitable, the Board shall have power at any time to suspend the clearings

and settlements of the day: but immediately upon such suspension the Board shall call a meeting of the members of the Clearing House to take such measures as may be necessary.

17. By-laws.—Every Clearing House now existing, or that may hereafter be established, may enact by-laws, rules and regulations for the government of its members, not inconsistent with these rules, and may fix therein among other things:—

1. The name of the Clearing House;
2. The number of members of the Board of Management and the quorum thereof;
3. The date, time and place for the Annual Meeting;
4. The mode of providing for the expenses of the Clearing House;
5. The hours for making exchanges, and for payment of the balances to or by the clearing bank;
6. The mode or medium in which balances are to be paid.

Any by-law, rule or regulation passed or adopted under this clause may be amended at any meeting of the members, provided that not less than two weeks' notice of such meeting, and of the proposed amendments, has been given.

NOTICES.

17. How to be given.—Any notice of meeting or any other notice authorized or required to be given to any member of the Association shall be deemed sufficiently given, if sent through the post office in a prepaid letter or by hand to the head office of any such member, addressed to such member or to the general manager, or cashier of such member, and in the case of the Bank of British North America through its chief office in the city of Montreal, addressed to it or to its general manager; and any notice sent by post shall be deemed to have been given on the day following that on which the same was mailed, and in proving the giving of such notice, it shall be sufficient to prove that the letter was properly prepaid, addressed and mailed.

Any notice authorized or required to be given to any member of the executive council may be sent by the secretary-treasurer by hand, or through the post office, or by telegraph, or in any other manner which the said council may prescribe.

Any notice authorized or required to be given to any associate as such shall be sufficiently given, if given by advertisement once in a newspaper in the cities of Montreal and Toronto.

18. Definitions.—In the foregoing by-laws, unless there be something in the subject or context inconsistent therewith, the words:

“The Association” shall mean “the Canadian Bankers’ Association,” incorporated by special Act of the Parliament of Canada (63 and 64 Vict. chap. 93).

“The executive council,” or “the council” shall mean “the executive council of the Canadian Bankers’ Association.”

CENTRAL GOLD RESERVES.

SUMMARY OF REGULATIONS RESPECTING CENTRAL GOLD RESERVES ADOPTED BY THE CANADIAN BANKERS' ASSOCIATION ON THE 26TH OF AUGUST, 1913, UNDER SUB-SECTION 5 OF SECTION 61 OF THE BANK ACT:—

The Bank of Montreal, the Canadian Bank of Commerce, the Royal Bank of Canada, and the Royal Trust Company, having been appointed trustees of the said central gold reserves, under sub-section 4 of the said section 61, shall have their office in the building of the Royal Trust Company, Montreal, and shall place the said reserves for safe-keeping in the vaults of the said company in said building.

Deposits shall be in current gold coin or Dominion notes in sums of \$5,000 or £1,000 each or multiples thereof.

Applications for withdrawal shall be for a sum of not less than \$50,000 or £10,000, in a form prescribed.

Deposits and withdrawals to be made on any banking day except Saturday, between 3 and 4 p.m., and on 24 hours' notice.

Each bank issuing notes to contribute towards expenses, \$250 at the beginning of each year, the balance to be borne by the banks in proportion to the average amount they have had on deposit in said reserves during the year.

The trustees shall furnish the President of the Association any return he may require for the council of the Association.

I N D E X.

- ABBREVIATIONS, xxxi.
- ACTION to recover instalments, 25.
calls or instalments, 95.
penalties, 371.
- ADDITIONAL SECURITY, bank may take mortgage as, 227.
- ADJOURNMENT of meetings, 33.
- ADMINISTRATION, letters of, on transmission, 113, 114.
- ADMINISTRATOR, when personally liable, 122.
foreign, recognized, 114, 116.
- ADVANCES on bank notes not recoverable, 160.
property on which bank may make, 175.
for building ships, 243.
- ADVERTISEMENTS, public notice by, 16.
defacing notes with, 349.
- ADVISORY BOARD to curator, 449.
- AGENCIES, bank may open, 175, 176.
- AGENCY CHARGES, collections not at branches, 284.
- AGENT, appointment of, by directors, for transfers, 101.
of bank to enter name on transmission, 113.
banks dealing with, 214.
when previous holder of warehouse receipt is an, 253.
transferring warehouse receipt or bill of lading, 254.
powers of, under Factors Act, 255.
one "entrusted" with possession of goods, etc., 257.
- AGREEMENT as to sale of shares, 105.
in writing to give warehouse receipt, etc., 273, 276.
- ALLOTMENT of stock subscribed, 27.
increase of stock, 77.
unsubscribed stock, 77.
meaning of, 86.
- ALTERATION, material, of cheque makes it void, 386.
- ANCILLARY PROBATE or administration, not required as to
transmission of shares, 114, 116.
not required as to deposits under \$500, 304.
- ANNUAL MEETING, subscribers to fix day for first, 30, 33.
shareholders may pass by-laws at, 40, 76, 79.
may fix day for, 40.
provisions respecting, 40, 42.
shareholders elect chairman of, 40.
election of directors at, 46.
public notice of, 51.
failure to elect directors at, 56.

- ANNUAL MEETING, statement to be submitted at, 124.
shareholders shall appoint auditors at, 132.
auditors' report to be read at, 139.
- ANNUAL RETURN to government, 319.
details comprised in, 319.
- ANNUAL STATEMENT to shareholders, 124.
be sent to shareholders and to Minister, 127.
auditors' report to be attached to, 352.
- ANNULMENT OF CHARTER by Court, 21, 209.
- APPLICATION of Bank Act, 16.
- ARREAR for calls, shareholders in, cannot vote, 76.
- ASSETS, annual statement of, 125.
purchase by a bank of a bank's, 305.
vest in purchasing bank, 314.
monthly return of, to government, 316.
order of charges on, 340.
notes a first charge on, 341.
Dominion claims a second charge on, 341.
Provincial claims a third charge on, 341.
- ASSIGNABLE, bills and notes are, even if not negotiable, 171, 172.
- ASSIGNMENT of funds, a cheque not, 387.
of shares—See Transfer.
under sec. 88—See Security.
- ASSOCIATION, definition of, 7.
See Canadian Bankers' Association.
- ATTORNEY-GENERAL of Canada may sue for penalties, 371.
- AUCTION, forfeited shares to be sold at, 92.
sale of mortgaged lands at, 235.
pledged goods at, 270.
- AUDIT, shareholders', 130.
- AUDITORS, general managers select 40 or more, 130.
Minister may disapprove of any name, 131.
list published in Canada Gazette, 131.
shareholders appoint, 132.
filling vacancy in office, 135.
remuneration of, 136.
rights and duties of, 137.
report to shareholders, 138.
Minister may direct enquiry, 140.
report annexed to annual statement, 352.
- AUTHENTICATION of declaration of transmission of shares, 108.
- AUTHORITY of bank to pay cheque, 383.
revocation of, 405.
- BAILEES, banks as, 203.
- BALLOT, president and vice-presidents elected by, 54.
shareholders to vote by, 73.

- BANK, definition of, 28.
 unauthorized use of title, 369.
 duties of, respecting cheque, 405, 413.
- BANK CHARTERS, term of, 20.
 Continuation Act, 21.
- BANK CIRCULATION REDEMPTION FUND, definition of, 8.
 continued, 161.
 five per cent. of average annual circulation, 161.
 to be adjusted annually, 162.
 to redeem notes of suspended banks, 162.
 payment by Minister out of, 165, 166.
 excess distributed among banks contributing, 167.
 refund of deposit, 167.
 rules of Treasury Board as to, 167.
 Minister may sue for contribution, 168.
- BANK HOLIDAYS, 214.
- BANK NOTES—See Notes.
- BANK OF BRITISH NORTH AMERICA, application of Act to, 22.
 chief office of, 23.
 issue of notes by, 156.
- BANK OF MONTREAL, purchase of other banks, 17, 305.
- BANKERS' ASSOCIATION—See Canadian Bankers' Association.
- BANKER'S LIEN defined, 210.
 illustrations of, 212-214.
- BANKING in Canada, summary of legislation, 1, 2.
 assigned to Dominion by B. N. A. Act, 2.
 business, increase of, 19.
 general business of, 176.
 hours, 217.
 using title improperly, 369.
- BANKS to which the Act applies, 16.
 in course of winding up, 21.
 purchased by other banks, 17, 305.
- BILL OF LADING, definition of, 8.
 Canadian legislation upon, 8.
 Ontario and Quebec legislation on, 240.
 banks may acquire, as collateral security, 244.
 right of Dominion to legislate respecting, 246.
 illustrations as to, 249.
 agent transferring, 253.
 in possession of, 253.
 vested with rights of owner, 254.
 covers product of pledged goods, 266.
 preference over unpaid vendor, 267.
 sale of goods covered by, 269.
 notice of, 270.

- BILL OF LADING, when bank may acquire, 273.
written promise to give, 273, 276.
may exchange for warehouse receipts, 279.
making false statement in, 355.
- BILLS OF EXCHANGE, bank may deal in or discount, 175, 186.
- BONDS, guarantee, to be given by officers, 66.
cases as to, 67.
of corporations, bank may deal in, 175, 193.
sale of, held as collateral, 224.
- BONUS or dividend not to impair capital, 144.
when may exceed eight per cent, 145.
- BOOKS, subscription, for stock, 24, 85.
transfers to be registered in, 95.
transfer, may be closed fifteen days, 141.
- BORROW money to pay debts of bank, directors may, 199.
- BRANCH SYSTEM, borrowed from Scotland, 176.
- BRANCHES, bank may open, 175, 176.
sometimes considered distinct, 176.
generally as one with main body, 176.
paper payable at other, 283.
not payable at other, 284.
- BRITISH colony, issue of notes in, 158.
Columbia, banking law before 1871, 1.
North America Act, banking in, 2, 6.
subjects, majority of directors to be, 51.
public securities, bank may deal in, 175.
- BROKER, dealing with securities, 214.
- BULLION, bank may deal in, 175.
- BUSINESS, when bank may commence, 33.
of bank managed by directors, 46.
and powers of bank, 174.
banks may do a general banking, 176, 197.
prohibited to banks, 204, 209, 210.
engaging in trade, 204, 205.
dealing in bank stock, 204, 205.
lending on land, 204, 206.
ships, 204, 207.
goods, 204, 207.
- BY-LAWS, shareholders may make, 40.
requirements as to, 41.
on whom binding, 42.
copies to be sent to shareholders, 45.
old, to be in force until repealed, 45, 58.
directors may make, 58.
to increase the capital stock, 76.
to reduce the capital stock, 79.
of Canadian Bankers' Association, 437, 440.

- CALGARY, Dominion notes delivered at, 146.
redeemable at, 147.
banks to redeem their notes at, 168.
- CALLS, only those who have paid can vote, 76.
directors may make, by resolution, 87.
interval between, and notice of, 87.
not to exceed ten per cent, 87.
remedy in case of non-payment, 95.
forfeiture of shares for non-payment, 92.
action to recover, 95.
by directors on double liability, 335.
failure to pay works forfeiture, 336.
refusal to make, an indictable offence, 368.
- CANADA, banking legislation in old, 1.
majority of directors to be domiciled in, 51.
issue of notes outside, 158.
agency charges, not at branches in, 284.
- CANADA GAZETTE, public notices in, 16.
notice of opening stock books, 24.
meeting of subscribers, 30.
special meetings, 71.
increase of capital stock, 77.
reduction of capital stock, 80.
notice in, dispensed with, 83, 84.
list of auditors to be published in, 132.
monthly statements of notes and gold in,
147.
notice to holders of bank notes, 166.
approval of sale and purchase of a bank,
311.
- CANADIAN BANK OF COMMERCE, purchase of other banks,
17, 305.
- CANADIAN BANKERS' ASSOCIATION, President shall summon
general managers, *re* auditors, 130.
shall publish list of auditors, 131.
may establish clearing houses, 220.
to appoint curator to suspended bank, 326, 327, 448.
may make by-laws, 329.
Act of incorporation, 434.
by-laws of, 440.
Monthly return of circulation, 444.
rules regulating clearing houses, 449.
regulations respecting Central Gold Reserves, 456.
- CANCELLATION of subscriptions to stock, 91.
- CAPITAL STOCK of banks incorporated hereafter, 24.
minimum amount for commencing business, 30.
may be increased, 76.

- CAPITAL STOCK, by-law to be approved by Treasury Board, 76.
allotment of unsubscribed, 78.
may be reduced, 79.
not to be reduced below \$250,000, 81.
lost, to be called for, 90.
annual statement of, 124.
not to be impaired by dividends, 144.
of banks, bank not to lend upon, 204, 205.
- CASES CITED, xiii.
- CASH RESERVES, definition of, 146.
40 per cent to be in Dominion notes, 146.
- CASHIER, powers of, 62.
powers of in U. S., 65.
title not now used in Canada, 66.
- CASTING VOTE in case of a tie, 57, 74.
- CENTRAL GOLD RESERVES, for extra issue of notes, 150.
establishment of fund, 151.
Association by-laws for, 151.
inspection twice a year, 152.
increased issue of notes, 154.
provision for Bank of B.N.A., 156.
regulations respecting, 456.
- CERTIFICATE to begin business, 33.
conditions as to, 34.
if not issued, 35.
for increase of stock, 76.
for reduction of stock, 79.
- CHAIRMAN of meeting of shareholders has casting vote, 74.
- CHANGES in banks, recent, 17.
- CHARGES FOR COLLECTIONS, 283.
agency, 284.
- CHARGES ON ASSETS. order of 340.
- CHARLOTTETOWN, Dominion notes delivered at, 146.
redeemable at, 147.
banks to redeem their notes at, 168.
- CHARTERS of banks continued to July 1st, 1923, 20.
annulment of, by Court, 21, 209.
of new banks, 23, 374.
forfeited by 90 days' suspension, 332.
- CHEQUE, a negotiable instrument, 187.
for collection, when to be presented, 201.
deposits usually withdrawn by, 291.
of Dominion government to be cashed at par, 304.
on a bank, law as to, 382.
definition of, 383.
irregularities in, 384.
when issued, 385.

- CHEQUE**, alteration of, 386.
when drawer has no account, 386.
provisions as to demand bills apply, 387.
has no days of grace, 387.
not an assignment of funds, 387.
effect of initialling or certifying, 388.
payment by, 392.
illustrations as to, 393.
not presented in a reasonable time, 401.
holder a creditor of the bank, 403.
what is a reasonable time, 403.
non-business days not counted, 404.
termination of authority to pay, 405.
countermand of payment, 405, 407.
death of customer, 405, 408.
crossing of, 409.
crossed generally, 411.
 specially, 411.
who may cross, 411.
crossing is material, 412.
crossed to more than one bank, 413.
improper payment of crossed, 413, 414.
crossed "not negotiable," 416.
bank not liable for paying, 416.
- CHIEF ACCOUNTANT** to sign return of daily circulation, 155.
 monthly returns, 316.
 special returns, 319.
 annual returns, 321.
- CHIEF OFFICE** of Bank of B. N. A., 23.
to be named in Act, 23.
meeting of subscribers at, 30.
directors elected at, 51.
special meeting of shareholders at, 71.
books of subscription at, 85.
shares transferable at, 100.
notes payable at, 170.
relation of branches to, 176.
public notices in newspaper at, 16, 51, 77, 80, 311.
- CHOSSES IN ACTION** are not goods, 10.
 bank may take assignment of, 171, 172,
 200, 201.
- CIRCULATION**, what notes banks may issue for, 148.
 limit of notes banks may issue for, 149.
 increase for moving crops, 154.
 notes for, how to be signed, 171.
 penalty for over issue, 346.
 issuing unauthorized notes for, 347.

- CIRCULATION, return of daily, 380.
monthly return to Association, 447.
- CIRCULATION FUND, definition of, 9.
See Bank Circulation Redemption Fund.
- CIVIL RIGHTS, assigned to provinces, 287.
- CLAYTON'S Case, rule in, applied, 289.
- CLEARING HOUSE, origin and methods, 218.
where established in Canada, 218.
crossing cheques originated in, 409.
Imperial legislation respecting, 410.
Canadian Bankers' Association may establish, 435.
rules of Association respecting, 449.
- CLERKS, directors may appoint, 59.
must give guarantee bond, 66.
- COINS, Canadian, 421.
legal tender in, 422.
- COLLATERAL SECURITY, what bank may take as, 175, 182.
meaning of, 182.
may become holder of, 182.
holds surplus as trustee, 182.
when parties to are sureties, 183.
release of surety, 184.
sale of stock, etc., held as, 224.
pledgee's rights, 225.
bank acquiring warehouse receipt as, 244.
bill of lading as, 244.
- COLLECTIONS by a bank, 198.
additional charge for, 283.
- COLONY, issue of notes in British, 158.
- COMMENCEMENT of Act, 1, 372.
- COMMISSION, none on government cheques, 304.
- COMPANY STOCK, bank dealing in, 175, 191.
- CONDITIONS OF TRANSFER of shares, 95.
- CONFEDERATION, bank legislation before, 1.
- CONSENT OF OWNER to sale of pledged goods, 270.
- CONSIDERATION for sale of bank's assets, 307.
- CONSOLIDATING ACT, interpretation of, 4.
- CONSTITUTIONALITY of Dominion legislation, 6.
- CONTENTS, table of, v.
- CONTRACT, requirements of valid, as to sale of shares, 105.
deposits from persons unable to, 285, 287.
may repay to such depositors, 285, 287.
- CONVERSION of pledged goods, 356.
- CORPORATIONS, bank may take stock, etc., of, 175.
- COUNTERFEIT NOTES to be stamped, 174.

- COUNTERMAND of payment of cheque, 405, 407.
- COUPONS, as to days of grace on, 191.
bear interest from maturity, 191.
- CROPS, increased note issue for moving, 154.
- CROSSED CHEQUES, 409.
origin of, 409.
not generally used in Canada, 409.
criminal legislation respecting, 410.
improper payment of, 413.
payment of in good faith, 413, 414.
bank collecting for customer in good faith,
416.
- CROSSING of cheque, what constitutes, 411.
is a material part of a cheque, 412.
obliterating is unlawful, 412.
"not negotiable," effect of, 416.
- CROWN, penalties to belong to, 371.
- CURATOR to suspended bank defined, 9.
appointed by president of Association, 326.
powers and duties of, 327.
bank officers to assist, 328.
to report to Minister, 328.
remuneration fixed by Judge, 328.
- CURATOR, Quebec, defined, 116.
when personally liable, 122.
- CURATORSHIP, for transmission of shares, 113, 114.
sufficient for deposit of \$500, p. 303.
- CURRENCY ACT, 420.
- CUSTOM of banking must be strictly proved, 219.
- CUSTOMER, bank may pay bills of, made payable at bank, 406.
receiving payment of crossed cheque for, 416.
who is, 417.
- DATE STAMP on envelope *prima facie* correct, 364.
- DEALER, the bank as a, 175, 178.
loans to wholesale, 258.
- DEATH of shareholder, transmission by, 107.
depositor of \$500 or under, 303.
customer stops unaccepted cheque, 405, 408.
- DEBENTURES, bank may deal in corporation, 175.
municipal, 175, 188.
negotiable instruments, 190.
sale of, held as collateral, 224.
of other corporations, 175, 193.
- DEBT, bank may take assignment of, 200, 201.
two meanings of word, 231.

- DEBT OR LIABILITY, meaning of, 98.
to be paid before transfer of shares, 95.
shares held for, 221.
security taken at time of contracting, 273.
- "DEBTS CONTRACTED," meaning of, in Act, 227, 228.
- DECEASE, transmission of shares by, 114.
- DECIMAL SYSTEM, introduction of, 420.
accounts in decimal currency, 425.
- DECLARATION of transmission of shares, 108, 111.
- DEFACEMENT of notes, penalty for, 349.
- DEFINITION of terms used in the Bank Act, 7.
See Words and Phrases.
- DEPOSIT with Minister of \$250,000, 30.
return of by Minister, 39.
Canadian banks, banks of, 174.
receipts, whether negotiable instruments, 187, 295.
assignable when not negotiable, 188, 296.
- DEPOSITOR a creditor of the bank, 289.
of \$500 or under, 303.
- DEPOSITS, annual statement of amount of, 125.
statute of limitations not to apply, 282.
bank may receive, 284.
of \$500 from persons unable to contract, 285, 287.
principal function of bank, 285.
become money of bank, 288.
situs of, 297.
in trust, payment of, 299.
- DESTRUCTION OF NOTES, certificate of, 446.
- DIRECTORS, number of, 30.
election of, 30, 41, 46, 51.
qualification of, 40, 45, 49.
quorum of, 40, 44.
in case of failure of election, 41, 56.
remuneration of, 41, 44.
by-law may limit loans to, 41, 44.
manage the affairs of the bank, 46.
duties and powers of, 46.
business to be done at meetings, 47.
acts of *de facto*, binding on bank, 47.
when bank liable for acts of, 49.
majority to be British subjects domiciled in Canada, 51.
those having most votes are, 53.
vacancy in board, how filled, 55.
president to preside at meetings, 57.
may make by-laws, 58.
may appoint officers, clerks, etc., 59.

- DIRECTORS** must require officers to give security, 66.
 four may call special meeting of shareholders, 71.
 special meeting to remove, 72.
 may fix rates for allotment of stock, 77.
 prescribe places for stock books, 85.
 when subscriptions may be cancelled by, 86.
 may make calls, 87.
 may sue for calls or forfeit stock, 91.
 remit forfeiture or penalty, 93.
 shall submit annual statement, 124.
 further statements if required, 127.
 shall not be auditors, 134.
 may declare dividends, 141.
 when liable for impairing capital, 144.
 pledging notes of bank, 160.
 may depute officer to sign notes, 171.
 may borrow for the bank, 199.
 making returns, when acting as president, 316, 321.
 to assist curator, 328.
 to make calls on double liability, 335.
 refusing to make calls an indictable offence, 368.
 giving fraudulent preference, an indictable offence,
 369.
- DIRECTORS, PROVISIONAL**—See Provisional Directors.
- DISCOUNT**, shares not to be issued at a, 88.
 Canadian banks are banks of, 174.
 paper and securities, bank may, 175.
 what it is to, 180.
 bank may charge seven per cent, 280.
 additional charge for collection elsewhere, 284.
 Dominion government cheques, not subject to, 304.
- DISCOUNTS**, shareholders may fix maximum, 41.
- DIVIDENDS**, where may be made payable, 141.
 what receipt sufficient for, 118.
 directors may declare quarterly or half-yearly, 141.
 public notice of, 141.
 on shares partly paid up, 142.
 when belong to the purchaser, 142.
 not subject to prescription or statute of limitations,
 143.
 or bonus not to impair capital, 144.
 directors liable for impairing capital by, 144.
 when may exceed eight per cent, 145.
 lien of bank on unpaid, 221.
 unpaid for five years, return of, 319.
- DOCUMENT OF TITLE**, agent in possession of, 171.
 who is deemed possessor of, 171.
 what is included in, 172.

- DOMINION banking legislation upheld, 6.
 securities, bank may deal in, 175.
 government cheques to be cashed at par, 304.
 ranks second on assets, 341.
- DOMINION NOTES, counterfeit, to be so stamped, 107.
 forty per cent of cash reserves to be in, 146.
 where may be exchanged for specie, 146.
 Act, R. S. C. c. 27, 146, 431.
 where redeemable, 147.
 provincial tax on, valid, 147.
 payment of \$100 in, if requested, 170.
 sterilization of, 170.
 Act, 431.
 are a legal tender, 431.
 issue and redemption of, 431.
 monthly statement of, 433.
 agencies for redemption, 433.
- DOUBLE LIABILITY of shareholders, notice in stock books, 25,
 87.
 in case of insolvency, 330.
 charter continues to enforce, 335.
 when directors are to make calls on, 335.
 enforcement under Winding-up Act, 336.
 forfeiture for non-payment of, 336.
 punishment of directors for not enforcing,
 368.
 liability of ex-shareholders, 338.
- DRAFTS UNPAID for five years, return of, 320.
- DUTIES AND POWERS of president, 54.
 bank officers, 59.
 illustrations, 60.
- DUTY of bank to pay cheque, 405.
 termination of, 405.
- ELECTION of directors, 13, 30, 51.
 may be set aside, 53.
 in case of a tie, 53.
 president and vice-president, 54.
 if not made on day appointed, 56.
- EQUITY OF REDEMPTION, bank getting release of, 237.
- ESTOPPEL as to entries in pass-book, 292.
- EXCHANGE of securities on goods, 279.
- EXECUTION, sale of shares under writ of, 106.
 purchase of debtor's land sold under, 235.
- EXECUTOR, when personally liable on shares, 122, 123.
 declaration of transmission by will, 113.
 foreign, recognized, 116, 117.
- EXPENSES of organization, 36.
- EX-SHAREHOLDERS, liability of, 338.

- EXTENSION of bank charters, 20, 21.
- FACTORS ACT, Ontario, 255.
 Imperial, 1877, 15.
 1889, 255.
 powers of agents under, 255.
- FAILURE TO ELECT directors at annual meeting, 56.
- FALSE NUMBER, selling shares by, 345.
- FALSE STATEMENT in warehouse receipt, etc., 355.
 returns, etc., 364.
- FARMER, definition of, 10.
 loans to, on security of grain, 259.
- FORECLOSURE. bank may procure, 237.
- FOREIGN EXECUTORS, assignees, etc., recognized, 114, 117, 303.
- FOREIGN public securities, bank may deal in, 175.
- FORFEITURE of stock for non-payment, 91.
 sale of forfeited shares, 92.
 directors or shareholders may remit, 93.
 procedure must be regular, 93.
 of charter for prohibited business, 209.
 of bank lands if not sold, 239.
 by shareholders on winding up, 336.
 of charter by insolvency, 332.
 of stock does not free from liability, 339.
- FORGED ENDORSEMENT, payment of cheque on, 388.
- FORM of Act of incorporation of new banks, 374.
 security under sec. 88, p. 375.
 monthly returns, 376.
 return of circulation, 380.
 unpaid dividends, etc., 381.
- FRACTION of shares not allotted, 78.
- FRAUDULENT PREFERENCE to creditors, 369.
- FREE BANKING ACT, 1.
- FURTHER statements, shareholders may require, 127.
- GAZETTE, see Canada Gazette.
- GENERAL BANKING BUSINESS, banks may do, 176, 197.
- GENERAL MANAGER, appointed by directors, 59.
 powers of, 60.
 formerly called cashier, 66.
 must give security, 66.
 not to vote or hold a proxy, 75.
 execute transfer of forfeited shares sold,
 92.
 sales under execu-
 tion, 106.
 to sign monthly returns, 316.
 special returns, 319.
 annual returns, 321.

- GENERAL MANAGER, issuing notes during suspension, an offence, 350.
 pledging notes, fine, 351.
 issuing notes fraudulently, an offence, 351.
 not attaching reports, 352.
 negligently making false statement, 364.
 giving creditor fraudulent preference, 369.
- GIFT, offering or accepting, an offence, 344.
- GOLD COIN, received for central gold reserves, 151.
 inspection of amount held by trustees, 153.
 bank may deal in, 175.
- GOODS, WARES AND MERCHANDISE, definition of, 10.
 bank not to lend on, 175, 204.
 deal in, 175, 204, 205.
 covered by warehouse receipt, 244.
 bill of lading, 244.
 title of owner vests in bank, 244.
 possession of, by agent, 253.
 of wholesale purchaser, shipper,
 dealer or manufacturer, security
 on, 258.
 form of security under sec. 88, 263.
 produced from pledged goods, 266.
 sale of, for non-payment of debt, 269.
 depriving bank of pledged goods,
 356.
- GOVERNOR IN COUNCIL, approval of sale of bank, 309.
 increase of stock, 309.
 effect of, 314.
 remission of penalties,
 371.
- GOVERNMENT, securities, bank may deal in, 175, 196.
 cheques (Dominion) to be cashed at par, 304.
 approval of sale of a bank, 309.
 Dominion, ranks second on assets, 341
 Provincial ranks third on assets, 341.
- GUARANTEE and pension funds, 45, 58, 71.
 by-laws respecting, continued in force, 58.
 managers and other officers must give, 66.
 illustrations of liability on bonds, 67-70.
 payment of goods, a bank may, 199.
- GUARDIAN, when personally liable on shares, 122, 123.
- HALF-YEARLY DIVIDENDS may be declared, 141.
- HALIFAX, Dominion notes delivered at, 146.
 redeemable at, 147.
 banks to redeem their notes at, 168.

- HEIRSHIP, letters of verification of, 114, 115, 303.
- HOLDER OF CHEQUE, when creditor of bank, 403.
- HOLIDAYS, bank, 216.
- HONORARY PRESIDENT, not included in president, 11.
directors may elect, 54.
- HOURS, BANKING, 217.
- HYPOTHECATION of notes by bank prohibited, 160.
- HYPOTHEQUES, bank not to lend upon, 204.
may take as additional security, 227.
- IMMOVABLE PROPERTY, bank not to lend on, 204, 206, 358.
acquired for use of bank, 226.
mortgages on, as additional security,
227.
bank may purchase debtor's, 235.
hold only for seven years,
238.
- IMPAIRMENT OF CAPITAL, calls in case of, 90.
- IMPRISONMENT for offering or accepting gift, 344.
issuing notes during suspension, 350.
pledging notes of bank, 351.
issuing notes fraudulently, 351.
false statement, 355.
depriving bank of pledged goods, 356.
wilfully false statement, 364.
not making calls, 368.
fraudulent preference, 369.
committing an offence against the Act, 371.
- INCORPORATION and organization of new banks, 23.
form of Act for, 23.
of Canadian Bankers' Association, 434.
- INCREASE OF CAPITAL STOCK, 77.
- INDICTABLE Offence—See Offence.
- INSOLVENCY of bank, 332.
suspension for 90 days constitutes, 332.
charter remains in force, 335.
calls in case of, 335.
- INSOLVENT BANK, notes bear interest from suspension, 164.
Minister pays from Circulation Fund,
165.
suspension for 90 days constitutes bank, 332.
- INSTALMENTS, provisional directors may sue for, 25.
directors may sue for, 91.
- INTEREST on bank notes, after suspension, 164.
ceases on notice on date fixed for payment, 165.
bank may charge seven per cent, 280.
to make quarterly return of rates charged, 280.
may allow any rate of, 282.

- INTEREST, effect of contract for over 7 per cent, 281.
action to recover back excessive, 281.
Statute of Limitations not to apply to, 282.
not payable unless agreed, 287.
return of, not paid for 5 years, 319.
- INTERNAL REGULATIONS of bank, 40.
- INTERVAL BETWEEN CALLS, 87.
- INTESTATE, when named, administrator not liable, 122.
- ISSUE AND CIRCULATION of notes, 148.
not during suspension, 148.
limit of, 149.
by Bank of British North America, 156.
of sterling notes in British colonies, 158.
- JOINT holders of shares, how they may vote, 75.
depositors, withdrawal of money, 299.
- LAND, bank not to lend money on, 204, 206, 358.
may acquire for its own use, 226.
may take mortgage as additional security, 227.
illustrations, 231.
may purchase debtor's, 235.
may hold only for seven years, 238.
- LEASE of debtor's premises, bank may acquire, 210.
- LEGAL TENDER, bank notes not, 171.
in coins, how to be made, 422.
- LEGISLATION on banking before Confederation, 1, 2.
by Dominion Parliament, 2, 5.
by Provincial legislatures taxing banks, 7.
to create new banks, 23.
for reduction of capital stock, 81.
of Ontario and Quebec as to warehouse receipts, 246.
- LETTER OF CREDIT, not a negotiable instrument, 197.
liability of bank under, 202.
- LETTERS OF ADMINISTRATION on transmission, 114.
foreign sufficient for transmission, 114, 116.
for deposit of \$500 or under, 303.
- LETTERS OF VERIFICATION of heirship in Quebec, 114, 115, 303.
- LIABILITIES, annual statement of, 124.
monthly return of, 316.
schedule of, 376.
- LIABILITY of bank for torts of directors, 49.
on guarantee bonds, 67-70.
not diminished by reduction of stock, 81.
of shareholder, when personal, 122.
bank has lien on stock for any, 221.
meaning of, 222.

- LIABILITY, double, of shareholders. 330.
 of directors not diminished by insolvency. 338.
 of ex-shareholders. 338.
- LICENSES, loans on timber, 240.
- LIEN to be paid before transfer of shares. 106.
 banker's. defined, 210.
 illustrations, 212.
 of bank on its own shares. 221.
- LIMITATIONS, Statute of. not to apply to dividends, 143.
 deposits. 282.
- LIQUIDATION of bank by directors, 335.
- LIQUIDATORS, bank may lend money to. 241.
 to pay Minister unclaimed moneys, 323.
 money for notes not presented.
 325.
 under Winding-up Act, 336, 337.
- LIST of transfers to be made up daily. 104.
 shareholders. to Minister annually, 322.
- LOANS, shareholders may fix maximum of. 41.
 on notes not recoverable from banks, 160.
 what, banks may make. 175.
 on standing timber, 240.
 on timber licenses. 240.
 for building vessels, 243.
 to wholesale purchasers, shippers or dealers. 258.
 to farmers on grain, 259.
 to wholesale manufacturers, 259.
- LOST CAPITAL, calls in case of, 90.
- MACHINERY, certain names impressed on notes by, 173.
- MAJORITY of directors a quorum if no by-law. 44.
 votes at meeting governs, 74.
 joint holders of shares may name attorney, 75.
 total shares necessary for reduction, 80.
 trustees may withdraw deposits, 299.
 joint depositors may withdraw money, 299.
- MANAGER of bank appointed by directors, 59.
 powers of, 60-64.
 must give security, 66.
 not to vote or hold a proxy, 75.
 See General Manager.
- MANUFACTURE of goods covered by warehouse receipt or security, 266.
- MANUFACTURER, definition of, 11.
 loans to wholesale. 258.
- MARRIAGE, transmission of shares by, 108.

- MEETING for organization of bank, 29.
 annual general, of shareholders, 40.
 of directors, 57, 58.
 business at regularly constituted, 58.
 special general, of shareholders, 71.
 who may call, notice, 71.
 statement to be laid before annual, 124.
- MERCANTILE LAW AMENDMENT ACT, 246, 392.
- MERGER of banks, 17, 305.
- MINIMUM CAPITAL of banks hereafter, 24.
 subscribed, to commence business, 30.
 payment of, for organization, 30.
- MINISTER, definition of in Act, 11.
 of Finance, \$250,000 capital to be paid to, 29.
 return of amount to bank by, 39.
 to furnish Dominion notes for gold, 146.
 holds Circulation Fund, 161.
 to receive 5 per cent. of circulation, 161.
 may redeem notes of insolvent bank, 161.
 monthly returns to, 316.
 may call for special returns, 318.
 annual returns to, 319.
 to receive unclaimed moneys on winding up, 323.
 moneys for outstanding notes on winding up, 325.
 may sue for penalties, 371.
- MINT, Ottawa branch of Royal, 422.
- MONEY, calls to be paid in, 87, 88.
 deposit in bank is, 289.
 due depositor is assignable, 291.
 may be attached, 291.
 other bills not to circulate as, 347.
- MONTHLY RETURNS by banks, 316.
 penalty for not making, 359.
- MONTREAL, chief office of Bank of B. N. A. at, 23.
 Dominion notes delivered at, 148.
 redeemable at, 147.
 banks to redeem their notes at, 168.
 central gold reserves held at, 456.
- MORTGAGE, bank may not lend money on, 204, 206.
 bank may take only as additional security, 227.
 on personal property as on real, 227.
 illustrations of banks holding, 231.
 on vessels, as additional security, 230.
 bank may purchase lands under, 235.
 exercise power of sale in, 235.
 for aid in building a vessel, 243.
 may deal therein as an individual, 243.

- MOVING OF CROPS, extra issue of notes for, 154.
- MUNICIPAL Acts of different provinces, 189, 190.
debentures, bank may deal in, 175, 188.
negotiability of, 188.
coupons of, 191.
- MUTILATION of notes, 349.
- NEGOTIABLE securities, bank may deal in or discount, 175, 185.
instruments, meaning of, 185.
- NEGOTIATION of bill received as collateral, 182.
security at time of, 273.
defined, 274.
- NEW BANKS in 1906, 17.
since 1906, 18, 19.
- NEW BRUNSWICK, banking law before 1867, 1.
- NEWFOUNDLAND, Canadian banks in, 160.
- NEWSPAPER, public notice to be given in, 16.
notice of annual meeting in, 51.
increase of stock in, 76.
reduction of stock in, 79.
redemption of notes in, 164.
sale of pledged goods in, 270.
both English and French in Quebec, 270.
approval of the sale of a bank, 311.
- NON-PAYMENT of calls, remedy for, 91, 92.
of debt, securities may be sold, 269, 271.
- NORTHERN CROWN BANK, 18.
- "NOT NEGOTIABLE" on crossed cheque, 411, 412, 416.
- NOTARIAL COPY of Quebec will, sufficient for transmission of shares, 114.
- NOTES issued by banks for circulation, 148.
when consent of curator necessary, 148.
when certificate of Treasury Board necessary, 148.
5 dollars, or multiple thereof, 148.
aggregate amount of, allowed, 149.
extra amount for moving crops, 154.
issue of sterling notes outside Canada, 158.
pledging, prohibited, 160.
when payable from Circulation Fund, 163.
of suspended bank bear interest, 164.
at par throughout Canada, 168.
to be redeemed in each province, 168.
no payment in unclean or torn, 170.
not a legal tender, 171.
not under seal, binding on bank, 171.
who are to sign for bank, 171.
counterfeit to be stamped, 174.
outstanding on winding-up, 325.
a first charge on assets, 340.
penalties for over-issue of, 346.

- NOTICE of calls, 16, 87. See Public Notice.
annual meeting by mail, 51.
allotment to be mailed, 78.
sale of shares under lien, 221.
sale of pledged goods, 270.
to shareholders of selling bank, 308.
customer's death stops payment of cheque, 405, 408.
- NOVA SCOTIA, banking law before 1867, 1.
- NUMBER of banks in Canada, 19.
of directors, 30.
shares may have distinguishing, 105.
- NUMBERING SHARES optional, 105.
not adopted by banks, 106.
- OFFENCE, payment of services before certificate, 342.
offering or accepting gift, 344.
commencing business without certificate, 345.
selling shares by false number, 345.
other than registered owner selling shares, 346.
issuing notes during suspension, 350.
issuing notes fraudulently, 351.
making false statement in warehouse receipt, bill of
lading or security, 355.
depriving bank of pledged goods, 356.
paying debts during suspension, 359.
wilfully making false statement, 364.
director refusing to make calls, 368.
giving undue preference to creditors, 369.
using title of "bank," etc., without authority, 369.
punishment for committing, 371.
- OFFICERS of a bank, directors may appoint, 59.
who are included in term, 60.
powers of various, 60, 65.
illustrations of, 60.
must give security, 66.
must stamp counterfeit notes, 174.
issuing notes during suspension, 350.
making false statement, 364.
giving fraudulent preference, 369.
- ONTARIO legislation on warehouse receipts, 246.
municipal debentures, 189.
powers of agents under Factors Act of, 255.
- OPENING of stock books, 24, 85.
- ORDER IN COUNCIL, approval of sale of bank, 309.
of increase of stock, 309.
effect of, 314.
remission of penalties, 371.
- ORGANIZATION of a bank, 24, 30, 36.
preliminary expenses, 36, 37.

- OUTSTANDING NOTES, funds for, to be paid to Minister, 325.
on winding-up, 325.
- OVERDUE DEBTS in annual statement, 126.
- OWNER, none but registered, can sell shares, 105, 345.
warehouse receipt gives rights of, 244.
where previous holder is agent of, 253.
paying debt, entitled to re-transfer, 254.
security under sec. 88 to be given only by, 263.
consent of, to sale of goods, 270.
- PAPER MONEY in B. N. A. Act, 6.
- PAR, bank notes circulate at, 168.
a bank to take its own notes at, 169.
Dominion government cheques to be cashed at, 304.
- PARLIAMENT, jurisdiction of, as to banking, 2.
incorporation of new banks, 23.
Act to reduce capital, 81.
list of shareholders to be laid before, 323.
- PASS-BOOKS, effect of entries in, 292.
law not settled as to, 293.
- PAYMENT in part in Dominion notes, 170.
to depositors, 285, 290.
of trust deposits, 299.
of notes first charge on assets, 340.
- PENALTIES rank last on bank assets, 341.
how to be recovered, 371.
to belong to the Crown, 371.
may be remitted by Governor in Council, 371.
- PENALTY for non-payment of calls, 92.
not holding sufficient Dominion notes, 346.
over-issue of notes, 346.
issuing bills, etc., as money, 347.
defacing notes, 349.
suspended bank issuing notes, 350.
issuing notes fraudulently, 351.
pledging notes, 352.
violation of secs. 86 to 90, 353.
depriving bank of pledged goods, 356.
as to sale of pledged shares, 357.
bank doing prohibited business, 358.
not sending monthly returns, 359.
returns of excessive issue, 360.
returns of real estate, 360.
interest rates, 361.
special returns, 361.
list of unpaid certified cheques, 362.
shareholders, 362.
unpaid dividends, etc., 363.

- PENSION FUND, shareholders may authorize, 45.
by-laws to remain in force, 78.
- PERSONAL property, bank shares are, 84.
bank may take mortgage as collateral, 227.
liability of trustees, executors, etc., 122.
- PLEDGE, right of, to sell pledge, 225.
ranking with unpaid vendor, 267, 269.
- PLEDGING NOTES by bank prohibited, 160, 359.
as collateral security is a negotiation, 182.
- POSSESSOR of goods or documents of title, 253.
- POST OFFICE money order not a negotiable instrument, 197.
stamp *prima facie* correct date, 363.
- POWER OF SALE, bank may exercise, 235.
acquire property under, 237.
- POWERS of various bank officers, 60.
- PREFERENCE of bank over unpaid vendor, 267, 269.
fraudulent, of creditor by officer of bank, 369.
- PRELIMINARY EXPENSES, premature payment of, 342.
- PREMIUM on unsubscribed stock, 78.
divided among owners, 78.
- PRESCRIPTION not to apply to dividends, 143.
deposits or interest. 282.
- PRESENTMENT of cheque in a reasonable time, 403.
- PRESIDENT does not include honorary president, 11.
shareholders fix remuneration of, 41.
election of, by directors, 54.
honorary, 54.
duties assigned by Act, 54.
vacancy in office of, 56.
to preside at meetings of directors, 57.
has double or casting vote in case of a tie, 57.
special meeting of shareholders to remove, 72.
to transfer shares sold at auction, 92.
under execution, 106.
for debt, 221.
to sign notes of the bank, 171.
the monthly returns, 316.
special returns. 319.
annual returns. 321.
pledging notes of bank, 351.
issuing notes fraudulently, 351.
concurring in false statement, 364.
giving fraudulent preference to creditor, 369.
- PRINCE EDWARD ISLAND, banking law before 1873, 2.
- PROBATE of will to be left with bank, 113, 114.
ancillary not required for transmission of shares, 114.
116.
for deposit under \$500, 303.

- PRODUCTS of agriculture, etc., defined, 11.
of the forest, defined, 12, 258.
of the sea, etc., defined, 12, 258.
loans to wholesale dealers of, 258.
- PROFIT AND LOSS account at annual meeting, 126.
to be mailed to shareholders, 127.
to be annexed to auditors' report, 352.
- PROFITS in case of impaired capital, 90.
annual statement of, 126.
division of, when may exceed 8 per cent, 145.
- PROHIBITED BUSINESS to banks, 204.
result of engaging in, 209, 210.
- PROMISE, WRITTEN, to give security, 273, 276.
- PROMISSORY NOTES, bank may deal in, 175, 178.
discounting by bank, 175, 180.
- PROVINCIAL taxation of banks upheld, 7.
registers may be kept, 99.
securities, bank may deal in, 175.
government ranks third on assets, 341.
- PROVISIONAL DIRECTORS to be named in Act, 23.
number and term of office, 24.
may open stock books, 24.
general duties of, 25.
may sue for instalments, 25.
no power to fill vacancies, 29.
must call first meeting of subscribers, 29.
must pay \$250,000 to the Minister, 30.
money returned if no certificate granted, 39.
balance distributed to subscribers, 38.
- PROXIES, shareholders may make by-law as to, 40, 43.
valid for only one year, 75.
- PROXY may be signed in blank, 43.
shareholders may vote by, 75.
who may act as, 75.
- PUBLIC AUCTION, sale of forfeited shares by, 92.
shares under lien, 221, 223.
collaterals by, 224.
pledged goods by, 270, 272.
- PUBLIC NOTICE, how to be given, 15.
opening stock books, 24.
first meeting of subscribers, 30.
annual meeting, 51.
special general meeting of shareholders, 71.

- PUBLIC NOTICE, increase of stock, 77.
reduction of stock, 80.
sale of forfeited shares, 92.
dividends declared, 141.
- PUBLIC SECURITIES, bank may deal in, 175.
- PURCHASE of lands under mortgage, 235.
vessel under mortgage, 243.
a bank's assets by another bank, 305.
consideration for, 307.
approval by selling bank, 308.
purchasing bank, 309.
government, 309.
conditions of approval, 310, 311.
- PURCHASER of shares sold under lien, 221.
products, loans to wholesale, 258, 260.
- QUALIFICATION of directors, 40, 45.
- QUARTERLY DIVIDENDS may be declared, 141.
- QUEBEC taxation of banks upheld, 7.
law as to married women in, 112.
notarial copy of will, 114.
letters of verification of heirship, 114, 115, 303.
law in case of intestacy, 115.
as to minors, etc., 115.
curators, 116.
foreign executors, 116.
power of sale in mortgage unknown in, 237.
agents and factors, 255.
ranking of unpaid vendor in, 267.
payment to joint and several creditors, 301.
- QUORUM at meeting of provisional directors, 27.
subscribers, 32.
directors, 40, 56.
shareholders, 52.
- RANCHER not a wholesale dealer, 261.
- RATIFICATION, bank may become liable by, 49.
- REAL ESTATE, bank not to lend money on, 204.
may acquire for its own use, 226.
must make return of, 226.
may take mortgage as additional security,
227.
may purchase debtor's, 235.
sell under power of sale, 235.
acquire title as individuals, 237.
hold only for 7 years, 238.
- REASONABLE TIME, cheque to be presented in, 401.
what is, for a cheque, 403.
- RECEIPTS, deposit, whether negotiable, 295.

- RECEIVERS, loans to, 241.
definition of, 242.
- REDEMPTION of notes of insolvent bank, 164.
at par in each province, 168.
- RE-DIVISION of bank shares, 82.
must be \$100 each, 82.
- REDUCTION of capital stock, 79.
majority of total shares necessary, 80.
statements necessary to secure, 80.
effect of, 81.
legislation for, 81.
- REGINA, Dominion notes delivered at, 146.
redeemable at, 147.
banks to redeem their notes at, 168.
- REGISTERS, stock, to be kept, 95.
all transfers to be entered, 95.
provincial may be kept, 99.
- REGISTERED LETTER, notice of sale of pledged property, 270.
- REGISTERED OWNER of shares alone can sell, 109, 346.
- REGULATIONS, internal, by-laws for, 40.
- REMUNERATION of directors, 41, 44.
auditors, 136, 140.
curator to suspended bank, 328.
- RENEWAL of bill or debt not to affect security, 273, 278.
- REPEAL of previous Bank Acts, 372.
- REPORT OF AUDITOR to shareholders, 138.
to Minister, 140.
to be annexed to annual statement, 352.
- RESERVES necessary for dividend over eight per cent, 145.
40 per cent in Dominion notes, 146.
three kinds of, 146.
cash, 146.
penalty for holding less, 346.
central gold, 151.
- RESOLUTION of directors, calls to be made by, 87.
- REST—See Reserves.
- RETURNS, impairment of capital, to be stated in next, 90.
monthly, of daily excess circulation, 155.
under Schedule E, 155, 380.
of real estate of bank, 226.
monthly, under Schedule D, 316, 359, 376.
how to be signed, 316.
special, may be called for, 318, 361.
annual, by bank, 319.
dividends unpaid for five years, 319.
unpaid drafts, 320.

- RETURNS, declaration under Schedule F, 321, 381.
list of shareholders, 322.
curator to make, for suspended bank, 328.
penalty for neglect, 359, 360, 361, 362, 363.
making wilfully false statement in, 364.
- REVOCATION of authority to pay cheque, 405.
- ROYAL MINT, Ottawa branch established, 422.
- SALARIES of officers and clerks fixed by directors, 59.
- SALE to be by auction as a rule, 92, 235, 270.
of forfeited shares, 92.
shares under execution, 106.
requirements for, valid, 105.
shares held under lien, 221, 357.
securities held as collateral, 224, 269.
bank premises, 226.
mortgaged lands by bank, 227.
goods covered by warehouse receipt, etc., 269.
a bank's assets to another bank, 305.
consent of Minister, 306.
approval by shareholders, 308, 309.
Governor in Council, 310, 311.
shares by false number, 343.
other than registered owner, 344.
- SCHEDULE A to Bank Act, 16, 17, 20, 373.
- SCHEDULE B to Bank Act, 23.
form of, 374.
- SCHEDULE C to Bank Act, 263.
changes in, 264.
form of, 375.
- SCHEDULE D to Bank Act, 316.
form of, 376.
- SCHEDULE E to Bank Act, 155, 156.
form of, 380.
- SCHEDULE F to Bank Act, 321.
form of, 381.
- SCRUTINEERS, appointment of, 32, 73.
- SEAL, agreement under, to take shares, 28.
by-laws to be under, 41.
contracts of bank under, 60, 61.
- SECRECY of bank accounts, 128.
old section 56 repealed, 128.
- SECURITIES, bank may deal in government and other public,
175, 185.
negotiable, defined, 185.
received by banks from agents, trustees, etc., 214.
held as collateral, 224.
right to dispose of, 224.
sale of, on non-payment of debt, 269.
right to exchange, 279.

- SECURITY, manager and other officers must give, 66.
 what bank may take as collateral, 175, 182.
 from wholesale purchaser or shipper on goods, 258.
 farmer on grain, 259.
 wholesale manufacturer on goods, 259.
 under section 88, by owner, 263.
 form of, Schedule C, 263, 375.
 may be "to the like effect," 263.
 equivalent to warehouse receipt, 265.
 wages for three months rank before, 265.
 goods manufactured from, 266.
 preference over unpaid vendor, 267.
 sale of goods covered by, 269.
 when bank may acquire, 273.
 written promise to give, 273, 276.
 may be exchanged for bill of lading, 279.
 fraudulently giving to creditor, 369.
- SELLING BANK, agreement submitted to shareholders, 308.
 consent of two-thirds of stock necessary, 308.
 to cease business, 315.
- SHAREHOLDERS may make by-laws to regulate bank, 40.
 fix date of annual meeting, 40.
 regulate proxies, 40.
 fix number of directors, 40.
 qualification of directors, 40.
 remuneration of directors, 41.
 maximum discounts, 41.
 authorize guarantee and pension funds,
 44.
 elect directors at annual meeting, 51.
 annual meeting at chief office, 51.
 special general meeting of, 71.
 called by directors or shareholders, 71.
 majority may remove directors, 72.
 vote by ballot, 73.
 have one vote for each share, 73.
 majority of shares voting governs, 74.
 may vote by proxy, 75.
 in arrear for calls cannot vote, 76.
 may vote increased capital stock, 76.
 allotment of unsubscribed stock to, 77.
 reduction of capital stock by, 79.
 liable for shares issued as paid up, 88.
 refusing or neglecting to pay calls, 91.
 may remit penalty or forfeiture, 93.
 when personally liable on stock, 122.
 may require further statements, 127.

SHAREHOLDERS, approval of sale and purchase of a bank, 305.
two-thirds of stock of selling bank, required, 308.

list of, to be sent annually to Minister, 320.
laid before Parliament, 323.

double liability of, 330.

meaning of term, 331.

liable for sixty days after transfer, 338.

SHAREHOLDERS' AUDIT, 130.

general managers select 40 or more auditors, 131.

Minister may disapprove, 131.

shareholders select from list, 132.

vacancy in office of auditor, 135.

powers and duties of auditors, 137.

report to shareholders, 138.

SHARE-REGISTRY OFFICES, in any province, 99.

for resident shareholders, 99.

agents for such offices, 101.

SHARES, to be \$100 each in new banks, 24.

payable by instalments, 25, 91.

held for 30 days entitled to vote, 73.

re-division of, 82.

personal property, 84.

sale of forfeited, 92.

transfer of forfeited, 92.

transfer of, conditions of valid, 95.

situs of, 101.

list of daily transfers to be kept, 104.

conditions of valid sales of, 105.

may be numbered, 105.

sold under execution, 106.

transmission of, 107.

subject to trusts, 118.

bank not to deal in its own or other bank shares, 204.

of corporations, bank dealing in, 175, 191.

bank has lien on debtor's, 221.

under lien, when to be sold, 221.

of purchasing for selling bank, 307.

transferred within 60 days of suspension, 338.

selling by false number an offence, 345.

SHERIFF'S SALE, bank may purchase lands sold at, 235.

SHIPPER, loans to wholesale, 258.

SHIPPING NOTE of railway, is a bill of lading, 250.

SHIPS, banks not to lend on, 204.

may aid in building, 243.

SHORT TITLE of Act, 1.

- SIGNING of return of circulation, 155.
 of notes for bank, 171.
 by machinery, 173.
 monthly returns, 316.
 special returns, 318.
 annual returns, 321.
- SILVER COIN, banks may deal in, 175.
- SITUS of bank shares, 101.
 deposits, 104, 297.
- SOVEREIGN BANK, 18.
- SPECIAL GENERAL MEETING of shareholders, 71.
 who may call, and how, 71.
 to remove president or directors, 72.
 may vote increase of capital stock, 76.
 may vote decrease of capital stock, 79.
 statements to be submitted at, 127.
- SPECIAL RETURNS may be called for, 318.
 penalty for not making, 361.
- STANDING TIMBER, loans on, 240.
- STATEMENT to obtain reduction of stock, 80.
 for annual meeting, 124.
 further, if required by shareholders, 127.
 to have auditor's report annexed, 352.
 irregular issue of, 352.
 false, in warehouse receipt, etc., 355.
 wilfully false, an indictable offence, 364.
- STATUTE OF FRAUDS, 10, 66.
- STATUTE OF LIMITATIONS, not to apply to dividends, 143.
 deposits or interest, 282.
- STATUTES CITED, xxix.
- ST. JOHN, Dominion notes delivered at, 146.
 redeemable at, 147.
 banks to redeem their notes at, 168.
- STERLING NOTES, issue of 158.
 for one pound, 158.
 where redeemable, 158.
- STOCK of corporations, bank may deal in, 175, 191.
 may not deal in bank, 204.
- STOCK BOOKS, opening of, 24, 85.
 particulars respecting, 25, 85.
- SUBSCRIBERS to stock must give particulars, 25, 85.
 meeting of, for organization, 29.
 business to be transacted, 30.
 meeting respecting expenses, 37.
 when entitled to cancel subscriptions, 86.

- SUBSTITUTION of goods under section 88, 262.
- SUIT, recovery of calls by, 91.
- SURETY, liability on guarantee bond, 67.
 who pays, rights of, 184.
- SUSPENDED BANKS, provisions as to, 21.
 not to issue notes, 148.
 notes of, bear interest, 164.
 penalty for issuing notes, 350.
- SUSPENSION, notes bear interest after, 164.
 for ninety days, constitutes insolvency, 332.
 holders of shares within 60 days liable, 338.
 issuing notes during, penalty, 350.
 paying bank debts during, 359.
- TAXATION of banks by provinces, 7, 113.
 Dominion notes, 147.
- TERMS, definition of, 7.
- TESTAMENTARY INSTRUMENT, transmission by, 113.
- TESTATOR, when named, executor not liable, 122.
- THIRD PARTIES, effect of irregularities as to, 48.
- TIE, how decided in election of directors, 53.
 casting vote in meetings of directors, 57.
 shareholders, 74.
- TITLE to mortgaged property, bank may acquire, 237.
 how acquired in Quebec, 238.
- TIMBER, a product of the forest, 12.
 loans on standing, 240.
- TIMBER LICENSES, loans on, 240.
- TORONTO, Dominion notes delivered at, 146.
 redeemable at, 147.
 banks to redeem their notes at, 168.
- TORTS of directors, when bank liable for, 49.
- TRADE, bank not to engage in, 204, 205.
- TRANSFER of forfeited shares sold at auction, 92.
 books to be kept, 95.
 to be registered in book, 95.
 conditions of valid, 95, 105.
 invalid if transferrer indebted, 95.
 agents to be appointed for, 101.
 list of daily, to be kept, 104.
 requirements for valid, 105.
 of shares sold under execution, 106.
 tax to be paid before, 113.
 held under lien, 221.
 within 60 days of suspension, 338.
- TRANSFERRER of shares not to owe bank, 95.
 to be registered owner, 105.

- TRANSMISSION of shares, different modes of, 107.
 authenticated by declaration, 108.
 by marriage of female shareholder,
 108, 111.
 further authentication, 112.
 by will or intestacy, 113.
 probate, administration, etc., to be
 left with bank, 113.
 foreign probate, etc., sufficient, 114.
- TREASURY BOARD, defined, 11.
 may grant certificate to begin business, 33.
 refuse certificate, 34.
 approve of increase of capital, 76.
 reduction of capital, 79.
 statements in favor required, 80.
 may authorize issue of notes after suspen-
 sion, 148.
 outside Canada, 158.
 may make rules for Circulation Fund, 166.
 may extend time bank may hold lands, 239.
 must approve sale of a bank to another
 bank, 305.
 may recommend remission of penalties, 371.
- TRUST, shares subject to, 118.
 bank not bound to see to, 118.
 when trustee personally liable for shares, 122.
 bank acquiring shares held in, 215.
 deposits in, 299.
 bank not bound to see to application, 300.
 deposits, payment of, 299.
- TRUSTEES, dividends may be paid to one, 118.
 when personally liable on shares, 122.
 of central gold reserves, 151, 456.
 banks dealing with, 214.
 majority may withdraw deposits, 299.
- TUTOR, defined, 114, 115.
 when personally liable, 122.
- TUTORSHIP, sufficient for transmission of shares, 114.
 to withdraw \$500, 303.
- UNABLE TO CONTRACT, deposits from those, 285, 287.
 may repay deposits to those, 285, 287.
- UNAUTHORIZED NOTES for circulation, 347.
- UNCLAIMED BALANCES in banks on winding up, 325.
 to be paid to the Minister, 326.
- UNCROSSING a crossed cheque, 412.

- UNPAID DIVIDENDS, list for Minister of Finance, 313.
letter to shareholder, 321.
penalty for neglect, 363.
- UNPAID DRAFTS, bills, etc., return of, 320.
penalty for neglect, 363.
letter to person interested, 321.
- UNPAID VENDOR, when ranks after bank, 267, 269.
how ranks in Quebec, 267.
- USAGE of trade, 249, 250.
- USURY, legislation against, repealed, 280.
- VACANCY in provisional directors, 29.
board of directors, 55.
office of president or vice-president, 56.
- VARYING agreement as to sale of collaterals, 224.
crossing on a cheque, 412.
- VENDOR, ranking of unpaid, after bank, 267, 269.
- VERIFICATION OF HEIRSHIP, letters of, in Quebec, 114, 115, 303.
- VESSELS, banks not to lend on, 204, 207.
may take as collateral security, 230.
aid in building, 243.
- VICE-PRESIDENT, remuneration of, 41.
there may be more than one, 54.
election of, by directors, 54.
vacancy in office of, 56.
presides and acts in absence of president, 57.
special meeting to remove, 72.
to transfer shares sold at auction, 92.
under execution, 106.
for debt, 221.
may sign notes of the bank, 171.
the monthly returns, 316.
issuing notes during suspension, 350.
pledging notes of bank, 351.
making false statement, 364.
giving fraudulent preference to creditor, 369.
- VICTORIA, Dominion notes delivered at, 146.
redeemable at, 147.
banks to redeem their notes at, 168.
- VOTE, one for each share held 30 days, 73.
no shareholder in arrear shall, 76.
no manager or other officer shall, 75.
- VOTING, by ballot at shareholders' meetings, 73.
- WAGES have priority over bank on security, 265.
- WAIVER of rights as to sale of securities, 224.
- WARD, if named, guardian not liable, 122.

- WAREHOUSE RECEIPT, definition of, 12.
 may cover logs in transit, 13.
 Canadian legislation on, 13.
 banks may acquire as collateral security, 244.
 effect of transfer to bank, 244.
 Ontario and Quebec legislation on, 246.
 illustrations as to, 249.
 when previous holder of, agent of owner, 253.
 agent in possession of, 253.
 vested with rights of owner, 254.
 covers product of pledged goods, 266.
 preference over unpaid vendor, 267.
 sale of goods covered by, 269.
 when bank may acquire, 273.
 written promise to give, 273, 276.
 may be exchanged for bill of lading, 279.
 making false statement in, 355.
- WAREHOUSEMAN must not be the owner of the goods, 12.
 receipt from one not a, 250.
 when not liable for losses, 252.
 agent cannot be, 255.
- WHOLESALE purchaser, shipper, dealer or manufacturer. loans to, on goods, 258.
 meaning of terms, 260.
- WIFE, declaration of transmission to, 108, 111.
- WILL, transmission of shares by, 113.
 notarial copy of Quebec, 114, 115.
 probate of, to be produced, 113, 114.
 if named, executor not personally liable, 122.
- WINDING-UP, banks in course of, 21.
 unclaimed moneys on, 323.
 outstanding notes on, 325.
 when to be done by directors, 335.
 calls to be made, 335.
 Act, Dominion, 336, 337.
- WINNIPEG, Dominion notes delivered at, 146.
 redeemable at, 147.
 banks to redeem their notes at, 168.
- WORDS AND PHRASES defined:—
 Association, 7.
 at least, 89.
 bank, 8.
 Bank Circulation Redemption Fund, 161.
 bank holidays, 216.

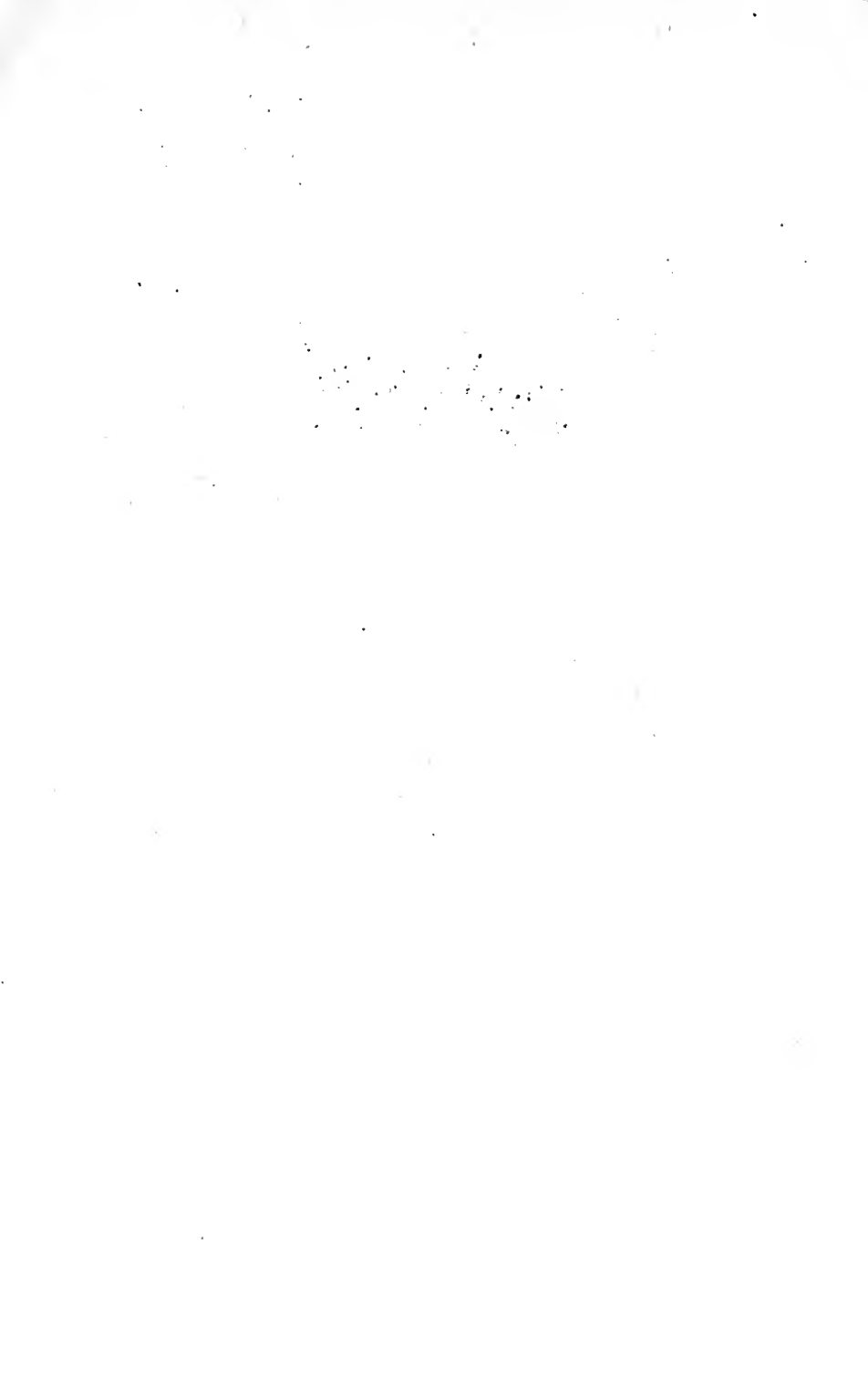
WORDS AND PHRASES DEFINED—*Continued.*

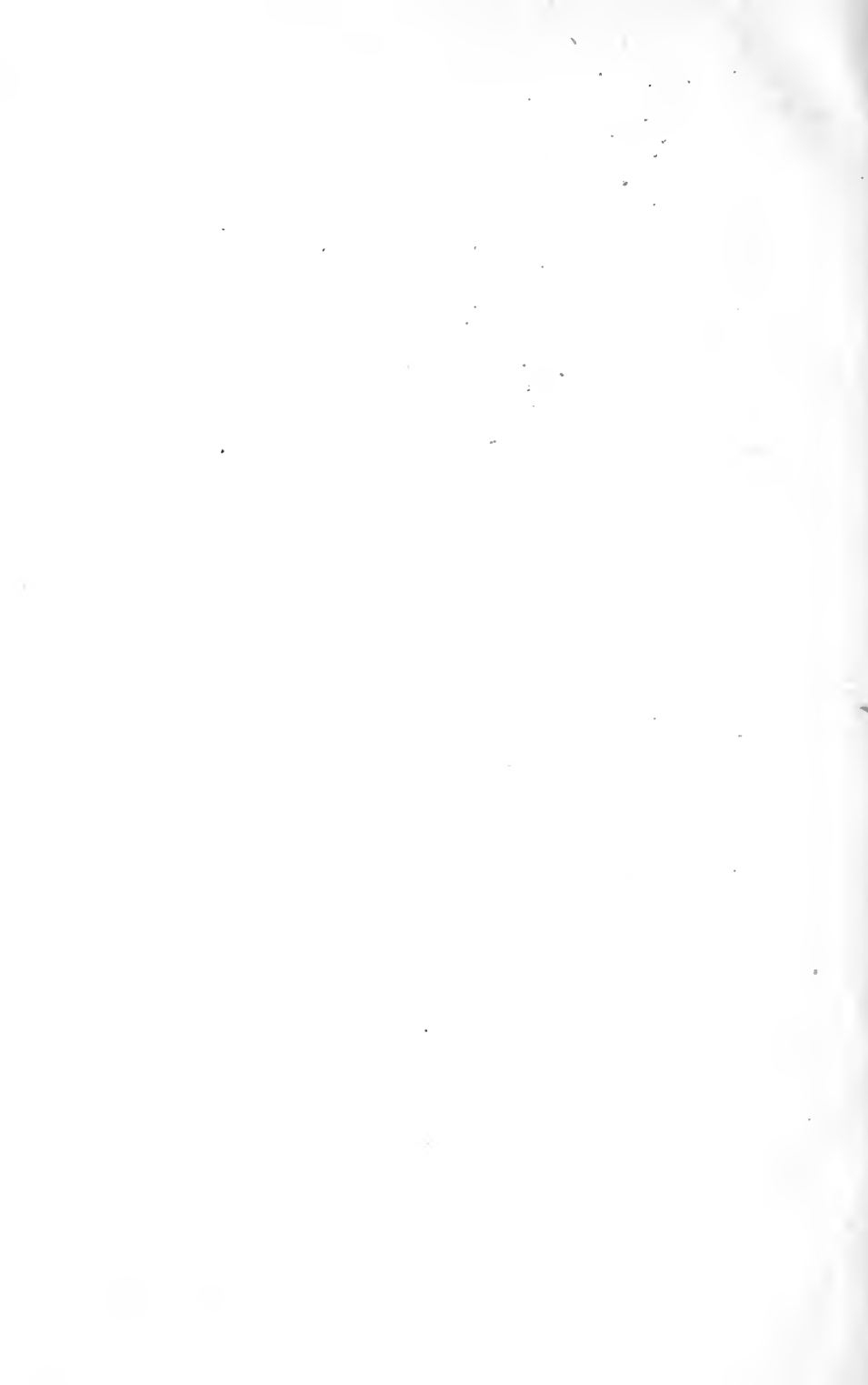
- banker's lien, 210.
- banking hours, 217.
- bill of lading, 8.
- cheque, 383.
- Circulation Fund, 9.
- clearing house, 218, 449.
- curator, 9.
- debts contracted, 182.
- farmer, 10.
- goods, wares and merchandise, 10.
- grain, 10.
- holder of a bill, 274.
- holder of a cheque, 403.
- letters of verification, 115.
- manufacturer, 11.
- Minister, 11,
- negotiable instrument, 185.
- negotiable securities, 185.
- negotiation, 274.
- not less than, 89.
- president, 11.
- products of agriculture, 11.
 - the forest, 12.
 - the sea, etc., 12.
- public notice, 15.
- reasonable time, 403.
- shares, 84.
- Treasury Board, 11.
- trustees, 12.
- tutor, 115.
- warehouse receipt, 12.

WRITTEN promise to give security, 273.

- consent of owner to sale of goods, 178.
-







UC SOUTHERN REGIONAL LIBRARY FACILITY



AA 000 732 598 8

